

No. 14925

United States
Court of Appeals
for the Ninth Circuit

YIP MIE JORK,

Appellant,

vs.

JOHN FOSTER DULLES, as Secretary of State,
Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern
District of California, Central Division

FILED

JUN 25 1953

WILLIAM H. FOSTER, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorney for Appellee:

LAUGHLIN E. WATERS,

United States Attorney,

MAX F. DEUTZ,

Assistant United States Attorney,
Chief of Civil Division,

JAMES R. DOOLEY,

Assistant United States Attorney,
600 Federal Building,
Los Angeles 12, California. [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court for the Southern District of California, Central Division

No. 14967-T.

YIP MIE JORK,

Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,

Defendant.

PETITION FOR DECLARATORY JUDGMENT
UNDER SECTION 503 OF THE NATIONALITY ACT OF 1940 (8 U.S.C. 903)

Plaintiff, Yip Mie Jork, complains of the defendant and for cause of action alleges:

I.

This complaint is filed and these proceedings are instituted against the defendant under Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172, 8 U.S.C. 903) for a judgment declaring the plaintiff to be a national of the United States.

II.

The defendant is the duly appointed, qualified, and acting Secretary of State of the United States, and as such is head of the Department of State; that the American Consul General at Hong Kong, British Crown Colony is, and at all times herein complained of, was an executive official of the defendant within the Department of State. [2]

III.

The plaintiff is the true and lawful blood son of Yip Dock, now deceased, who was a citizen of the United States, born at San Francisco, California on March 1, 1885 (K.S. 11-1-15) and who held Certificate of Identity No. 13203 issued on October 2, 1913 by the Immigration & Naturalization Service, San Francisco, California, denoting such citizenship.

IV.

The plaintiff's father, Yip Dock, made various departures from the United States to China and reentered the United States, the exact dates and ports of departure and reentry being unknown to plaintiff.

V.

The plaintiff's father, Yip Dock, was married to Wong Shee on May 6, 1913 (C.R. 2-4-1) at Kin Mo Village, Chung Shan District, Kwangtung Province, China; that such marriage was contracted in accordance with the marriage customs and ceremonies approved and legally recognized in China; that no official record of such marriage is available in China so far as the plaintiff is informed; that the plaintiff is the issue of the aforesaid marriage of Yip Dock and Wong Shee and was born on the date and at the place hereinafter shown: Yip Mie Jork, born February 22, 1928 (C.R. 17-2-2) at Kin Mo Village, Chung Shan District, Kwangtung Province, China.

VI.

On or about October, 1950, the plaintiff filed with

the American Consul General at Hong Kong, British Crown Colony, an application for issuance of a United States passport or other documentation permitting him to travel to the United States; that [3] since the filing of plaintiff's application for passport or other documentation permitting him to travel to the United States the American Consul Service General, Hong Kong, British Crown Colony, has declined and refused to issue to the plaintiff a United States passport or other document facilitating his travel to the United States.

VII.

Plaintiff has at all times herein mentioned claimed and now claims the rights and privileges of a national of the United States to enter, remain, and reside permanently in the United States as a citizen thereof, but the defendant, acting through his official executive, to-wit: the American Consul General, Hong Kong, British Crown Colony, has inexcusably delayed arbitrarily and unreasonably refused and denied him the right or privilege of a United States national to be issued a passport or a document for the purpose of traveling to the United States, on the ground he is not a national of the U. S.

VIII.

The plaintiff desires and intends to come to the United States and establish his domicile in Los Angeles, California which is the residence of his brother, Yip Share Leung, and plaintiff claims

permanent residence in the Southern District of California and within the jurisdiction of this Court.

IX.

Plaintiff has never committed any act nor executed any instrument of expatriation nor renounced his United States citizenship.

X.

Plaintiff, Yip Mie Jork, claims to be a United States citizen and/or national, such citizenship and/or nationality having been acquired pursuant to the provisions of Section 1993, Revised Statutes of the United States.

Wherefore, plaintiff prays for judgment declaring him to be [4] a national of the United States and for such other and further relief as may be just and proper.

/s/ MARSHALL E. KIDDER,

Attorney for Plaintiff [5]

[Endorsed]: Filed December 23, 1952.

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR SUBSTITUTION OF PARTY DEFENDANT

It Is Hereby Stipulated by and between counsel in the above entitled matter that John Foster Dulles, as Secretary of State, be substituted as party defendant for Dean Acheson as Secretary of State.

This stipulation is made pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

Dated: March 16, 1953.

/s/ MARSHALL E. KIDDER,
Attorney for Plaintiff

WALTER S. BINNS,
United States Attorney,

CLYDE C. DOWNING,
Asst. U. S. Attorney, Chief, Civil
Division,

/s/ By ARLINE MARTIN,
Asst. U. S. Attorney,
Attorneys for Defendant

It Is So Ordered this 10th day of April, 1953.

/s/ HARRY C. WESTOVER,
United States District Judge [9]

[Endorsed]: Filed April 10, 1953.

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, Dean Acheson, as Secretary of State, through his attorneys, Walter S. Binns, United States Attorney for the Southern District of California, and Clyde C. Downing and Arline Martin, Assistant United States Attorneys for the Southern District of California, and in answer to plaintiff's Complaint herein, admits, denies and alleges as follows:

I.

Denies the allegations contained in Paragraphs III, IV, V, VI, VII, VIII, IX and X.

II.

Defendant neither admits nor denies the allegations contained in Paragraph I, of plaintiff's Complaint, the same being a conclusion of law.

III.

Admits the allegations contained in Paragraph II of said Complaint, that the defendant is the duly appointed, qualified and acting Secretary of State of the United States and as such is head of the Department of State. [6]

For a Further, Separate and Second Defense Defendant Alleges:

I.

The Complaint of plaintiff fails to state a claim upon which relief can be granted.

Wherefore, defendant prays for a judgment dismissing said Complaint and denying the relief prayed for therein and for costs.

WALTER S. BINNS,
United States Attorney

CLYDE C. DOWNING,
Asst. U. S. Attorney, Chief, Civil
Division

/s/ ARLINE MARTIN,
Asst. U. S. Attorney
Attorneys for Defendant [7]

Affidavit of Service by Mail attached. [8]

[Endorsed]: Filed January 13, 1953.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above cause having come on regularly for trial on May 2, 1955 and May 3, 1955, before the Hon. Harry C. Westover, Judge Presiding without a jury, the plaintiff being represented by his attorney, Marshall E. Kidder, and the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney, and Max F. Deutz and

James R. Dooley, Assistant United States Attorneys by James R. Dooley; and evidence both oral and documentary having been introduced and received, and the Court having considered the same, and having heard the arguments of counsel and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

Plaintiff, Yip Mie Jork, claims permanent residence within the Southern District of California, and within the jurisdiction of this Court. [22]

II.

The defendant, John Foster Dulles, is the duly appointed, qualified, and acting Secretary of State of the United States, and as such is the head of the Department of State.

III.

On September 5, 1951, plaintiff executed an application for passport at the American Consulate General, Hong Kong, B.C.C., in which application he claimed to be a citizen of the United States, and in which he sought a passport to travel to the United States.

IV.

On December 23, 1952, the date on which the action herein was instituted, the defendant had not passed upon plaintiff's application for passport. The delay by defendant in passing upon plaintiff's application for passport was unreasonable; and

prior to December 23, 1952, plaintiff had been denied a right or privilege as a national of the United States by defendant upon the grounds that plaintiff was not a national of the United States.

V.

Plaintiff, Yip Mie Jork, claims to be the true and lawful blood son of Yip Dock, his alleged father, and claims to have acquired nationality and/or citizenship through Yip Dock by virtue of Section 1993 of the Revised Statutes of the United States.

VI.

The evidence adduced by the plaintiff to establish that he is the lawful blood son of Yip Dock was so scant, and the witnesses who testified on behalf of plaintiff had so little knowledge of the claimed relationship, that plaintiff has failed to sustain his burden of proving that he is the lawful blood son of Yip Dock. [23]

VII.

Plaintiff has failed to sustain his burden of proving that he is a national or citizen of the United States.

Conclusions of Law

I.

This Court has jurisdiction of the within action pursuant to Section 503 of the Nationality Act of 1940, 54 Stat. 1171, 8 U.S.C.A. § 903.

II.

The burden was upon the plaintiff to establish

his claim to United States nationality, and plaintiff has failed to sustain that burden.

III.

Judgment should be entered in favor of the defendant and against the plaintiff, dismissing plaintiff's Complaint and cause of action. and awarding to the defendant his costs and disbursements.

Dated This 2nd day of June, 1955.

/s/ HARRY C. WESTOVER,

Judge, U. S. District Court [24]

Affidavit of Service by Mail attached. [25]

[Endorsed]: Filed June 2, 1955.

[Title of District Court and Cause.]

JUDGMENT

The above cause having come on regularly for trial on May 2, 1955 and May 3, 1955, before the Hon. Harry C. Westover, Judge Presiding without a jury, the plaintiff being represented by his attorney, Marshall E. Kidder, and the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney, and Max F. Deutz and James R. Dooley, Assistant United States Attorneys by James R. Dooley; and evidence both oral and documentary having been introduced and received, and the Court having considered the same, and having heard the arguments of counsel and

being fully advised in the premises; and the Court having heretofore made its Findings of Fact and Conclusions of Law and having ordered that judgment be entered in accordance therewith;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed: [26]

1. That judgment be entered in favor of the defendant and against the plaintiff, dismissing plaintiff's Complaint and cause of action.

2. That the defendant have his costs and disbursements herein incurred, taxed at \$20.00.

Dated: This 2nd day of June, 1955.

/s/ HARRY C. WESTOVER,
United States District Judge [27]

[Endorsed]: Filed and entered June 2, 1955.

[Title of District Court and Cause.]

ORDER SETTING ASIDE JUDGMENT, FINDINGS AND CONCLUSIONS AND REOPENING CASE

The above cause having come on regularly for hearing on June 27, 1955 before the Honorable Harry C. Westover, Judge Presiding, in connection with plaintiff's motion for new trial, the plaintiff being represented by his attorney, Marshall E. Kidder, and the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney, and Max F. Deutz and James R. Dooley, Assistant United States Attorneys, By James R.

Dooley, the Court having considered the written motion and affidavits and having heard the arguments of counsel, enters the following order:

It Is Hereby Ordered that the Judgment heretofore entered on June 2, 1955, as well as the Findings of Fact and Conclusions of Law upon which the said Judgment is predicated, be vacated and set aside, and that the case be reopened for the purpose of receiving additional evidence.

Dated: This 13th day of July, 1955.

/s/ HARRY C. WESTOVER,

United States District Judge [28]

Acknowledgment of Service attached. [29]

[Endorsed]: Filed July 13, 1955. Judgment entered July 14, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above cause having come on regularly for trial on May 2, 1955 and May 3, 1955, before the Honorable Harry C. Westover, Judge Presiding without a jury, the plaintiff being represented by his attorney, Marshall E. Kidder, and the defendant being represented by his attorney, Laughlin E. Waters, United States Attorney, and Max F. Deutz and James R. Dooley, Assistant United States Attorneys, by James R. Dooley; and the Court, after

having received evidence both oral and documentary, having considered the same, and having heretofore on June 2, 1955 filed its Findings of Fact and Conclusions of Law and entered Judgment in accordance therewith; and counsel for plaintiff having moved the Court for a new trial, and the Court having ordered that the Judgment theretofore entered on June 2, 1955 as well as the Findings of Fact and Conclusions of Law upon which said Judgment [30] was based, be vacated and set aside and that the case be reopened for the purpose of receiving additional evidence; and the above cause having come on for hearing on July 18, 1955 and on July 26, 1955 for the purpose of receiving additional evidence, before the Honorable Harry C. Westover, Judge Presiding without a jury, both parties having the same representation as at the former hearing; and additional evidence both oral and documentary having been introduced and received on behalf of both plaintiff and the defendant, and the Court having considered the same; and the Court having heard the arguments of counsel and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

Plaintiff claims permanent residence within the Southern District of California, and within the jurisdiction of this Court.

II.

The defendant, John Foster Dulles, is the duly

appointed, qualified, and acting Secretary of State of the United States, and as such is the head of the Department of State.

III.

On September 5, 1951, plaintiff executed an application for passport at the American Consulate General, Hong Kong, B.C.C., in which application he claimed to be a citizen of the United States, and in which he sought a passport to travel to the United States.

IV.

On December 23, 1952, the date on which the action herein was instituted, the defendant had not passed upon plaintiff's application for passport. The delay by defendant in passing upon plaintiff's application for passport was unreasonable. By reason [31] of such delay plaintiff had been denied a right or privilege as a national of the United States by defendant upon the grounds that plaintiff was not a national of the United States prior to December 23, 1952.

V.

Plaintiff claims to be the true and lawful blood son of Yip Dock, his alleged father, and claims to have acquired nationality and/or citizenship through Yip Dock by virtue of Section 1993 of the Revised Statutes of the United States.

VI.

The evidence adduced by the plaintiff to establish that he is the lawful blood son of Yip Dock was so scant; the witnesses who testified on behalf of the

plaintiff had so little real knowledge of the claimed relationship; and the testimony of the witnesses who appeared on behalf of the plaintiff was, in many respects, so improbable and unworthy of belief; that the plaintiff has failed to satisfy or convince this Court that the person who purports to be Yip Mie Jork, and who executed an application for passport at the American Consulate General, Hong Kong, B.C.C., on September 5, 1951, is the lawful blood son of Yip Dock, or to satisfy or convince this Court that the person who purports to be Yip Mie Jork is in truth and in fact Yip Mie Jork.

VII.

The plaintiff has failed to present sufficient credible evidence to sustain his burden of proving that he is the lawful blood son of Yip Dock.

VIII.

The plaintiff has failed to sustain his burden of proving that he is a national or citizen of the United States. [32]

Conclusions of Law

I.

This Court has jurisdiction of the within action pursuant to Section 503 of the Nationality Act of 1940, 54 Stat. 1171, 8 U.S.C.A. § 903.

II.

The burden was upon the plaintiff to establish his claim to United States nationality, and plaintiff has failed to sustain that burden.

III.

Judgment should be entered in favor of the defendant and against the plaintiff, dismissing plaintiff's complaint and cause of action, denying the relief prayed for therein, and awarding to the defendant his costs and disbursements.

Dated: This 10th day of August, 1955.

/s/ HARRY C. WESTOVER,

United States District Judge [33]

Affidavit of Service by Mail attached. [34]

[Endorsed]: Lodged August 2, 1955. Filed August 10, 1955.

In the United States District Court for the Southern District of California, Central Division

Civil No. 14967-HW

YIP MIE JORK,

Plaintiff,

vs.

JOHN FOSTER DULLES, as Secretary of State,
Defendant.

JUDGMENT

The above cause having come on regularly for trial on May 2, 1955 and May 3, 1955, before the Honorable Harry C. Westover, Judge Presiding without a jury, the plaintiff being represented by his attorney, Marshall E. Kidder, and the defendant being represented by his attorney, Laughlin

E. Waters, United States Attorney, and Max F. Deutz and James R. Dooley, Assistant United States Attorneys, by James R. Dooley; and the Court, after having received evidence both oral and documentary, having considered the same, and having heretofore on June 2, 1955 filed its Findings of Fact and Conclusions of Law and entered Judgment in accordance therewith; and counsel for plaintiff having moved the Court for a new trial, and the Court having ordered that the Judgment theretofore entered on June 2, 1955 as well as the Findings of Fact and Conclusions of Law upon which said Judgment [35] was based, be vacated and set aside and that the case be reopened for the purpose of receiving additional evidence; and the above cause having come on for hearing on July 18, 1955 and on July 26, 1955 for the purpose of receiving additional evidence, before the Honorable Harry C. Westover, Judge Presiding without a jury, both parties having the same representation as at the former hearing; and additional evidence both oral and documentary having been introduced and received on behalf of both plaintiff and the defendant, and the Court having considered the same; and the Court having heard the arguments of counsel and being fully advised in the premises; and the Court having heretofore made its Findings of Fact and Conclusions of Law;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That judgment be entered in favor of the de-

fendant and against the plaintiff, dismissing plaintiff's complaint and cause of action, and denying the relief prayed for therein.

2. That the defendant have his costs and disbursements herein incurred, taxed at \$20.00.

Dated: This 10th day of August, 1955.

/s/ HARRY C. WESTOVER,
United States District Judge [36]

Affidavit of Service by Mail attached. [37]

[Endorsed]: Lodged Aug. 2, 1955. Filed Aug. 10, 1955. Entered Aug. 11, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Yip Mie Jork, Plaintiff herein, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in the above entitled action against plaintiff and in favor of defendant which said judgment was entered in this action on August 11, 1955.

/s/ MARSHALL E. KIDDER,
Attorney for Plaintiff [38]

Acknowledgment of Service attached. [39]

[Endorsed]: Filed August 26, 1955.

[Title of District Court and Cause.]

STIPULATION REGARDING ORIGINAL
EXHIBITS

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel, that the original exhibits introduced at the trial of the action, may be considered in their original form by the United States Court of Appeals for the Ninth Circuit in connection with the pending appeal, and need not be printed.

Dated this 10th day of October, 1955.

/s/ MARSHALL E. KIDDER,
Attorney for Plaintiff

LAUGHLIN E. WATERS,
United States Attorney

MAX F. DEUTZ,
Asst. U. S. Attorney

JAMES R. DOOLEY,
Asst. U. S. Attorney

/s/ By JAMES R. DOOLEY
Attorneys for Defendant

[Endorsed]: Filed October 13, 1955.

[49]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 49, inclusive, contain the original:

Petition for Declaratory Judgment;

Answer;

Stipulation and Order for Substitution of Party Defendant;

Motion and Notice of Motion to Dismiss;

Findings for Fact and Conclusions of Law (filed 6/2/55);

Judgment (filed 6/2/55);

Order Setting Aside Judgment, and Reopening Case;

Findings of Fact and Conclusions of Law (filed 8/10/55);

Judgment (filed 8/10/55);

Notice of Appeal;

Order Extending Time to Docket Appeal;

Designation of Contents of Record on Appeal;

Counter-Designation of Contents of Record on Appeal;

Stipulation Regarding Original Exhibits and a full, true and correct copy of the minutes of the court for April 25, 1955, which, together with original defendant's exhibits A and B and Plaintiff's exhibits 1-7, inclusive, in the above-entitled cause,

constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 27th day of October, 1955.

[Seal] JOHN A. CHILDRESS,
Clerk

/s/ By CHARLES E. JONES,
Deputy

In the United States District Court for the Southern District of California, Central Division

No. 14967-HW—Civil

YIP MIE JORK, Plaintiff,
vs.

JOHN FOSTER DULLES, Secretary of State,
Defendant.

TRANSCRIPT OF TESTIMONY

Los Angeles, Calif., Monday, May 2, 1955

Honorable Harry C. Westover, Judge presiding.

Appearances: For the Plaintiff: Marshall E. Kidder, 448 South Hill St., Suite 1218, Los Angeles,

Calif. For the Defendant: Laughlin E. Waters, U.S. Attorney, by James R. Dooley, Asst. U.S. Attorney, 600 Federal Bldg., Los Angeles, Calif. [1*]

The Clerk: No. 14967-HW Civil, Yip Mie Jork vs. John Foster Dulles, Secretary of State, trial.

Mr. Kidder: Ready for the plaintiff.

Mr. Dooley: Ready for the defendant, your Honor.

The Court: I will make the usual order, that all of the witnesses remain out of the courtroom except the one on the stand.

Mr. Kidder: Yes, your Honor.

The Court: We have a motion pending to amend the Complaint.

Mr. Kidder: Yes, your Honor.

The Court: The motion is granted.

Mr. Dooley: Your Honor, for the purpose of the record I would like to object to this amendment on the ground that the statute under which this action was brought has expired and that an amendment is not authorized.

The Court: The objection is overruled.

Mr. Kidder: The interpreter is here. I might say this gentleman speaks reasonably good English. It may be we would need the interpreter only for dates.

The Court: Swear the interpreter.

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Whereupon, Edward D. Wong was duly sworn to interpret the Chinese language into English and the English language into Chinese.) [2]

Mr. Dooley: Your Honor, I would like to have a short voir dire of the interpreter.

The Court: All right.

EDWARD D. WONG

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Dooley): Mr. Wong, do you know the plaintiff in this case? A. No, sir.

Q. Do you know any of the witnesses who are to appear in this case? A. No, sir.

Q. Have you discussed this case with any of the witnesses who are to appear in this proceeding?

A. No, sir.

Q. Have you discussed this case with the attorneys for the plaintiff in this proceeding?

A. No, sir.

Q. Have you interpreted before in any federal proceeding? A. Yes, sir.

Q. Are you qualified to interpret in the federal courts? A. Yes.

Q. Have you interpreted in the federal courts previously? [3] A. Yes, sir.

Mr. Dooley: No further questions.

(Witness excused.)

The Court: Call your first witness.

Mr. Kidder: Mr. Wong, will you stand beside him?

The Court: Let's try to get along without the interpreter. It will be faster if we can get by without the interpreter.

Mr. Kidder: Mr. Wong, will you stand by and only if he indicates he doesn't understand, perhaps you can interpret to him.

The Interpreter: All right, sir.

SHARE LEUNG YIP

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Share Leung Yip.

Mr. Kidder: Your Honor, at this time there may be part of the files that we should have, the passport file in the Department of State and, also, I am sure the government has available the immigration files pertaining to two of my witnesses, as well as the alleged father of the plaintiff. I would ask that those files be made available so that they can be introduced as evidence. [4]

The Court: Are you willing to stipulate that they can be introduced?

Mr. Kidder: I am willing to stipulate.

The Court: The government as a general rule has no objection. Mr. Dooley?

Mr. Dooley: No objection.

(Testimony of Share Leung Yip.)

The Court: Produce the files and we will have them marked.

The Clerk: Which file was introduced at the time of the motion?

Mr. Kidder: That was the Department of State file.

The Clerk: You will have to re-offer that one. That will be 1 in evidence.

Mr. Kidder: This is the Department of State file relating to Yip Mie Jork, the plaintiff, marked Exhibit 1.

The Court: Exhibit 1.

(The file referred to was received in evidence and marked Plaintiff's Exhibit No. 1.)

Mr. Kidder: I offer at this time the file of the Immigration and Naturalization Service pertaining to Yip Dock.

The Clerk: Exhibit 2.

(The file referred to was received in evidence and marked Plaintiff's Exhibit No. 2.)

The Court: Who is Yip Dock?

Mr. Kidder: The father of the plaintiff.

I offer at this time the file of the Immigration and Naturalization [5] Service, No. 12017/44352, relating to the witness Yip Share Leung. He is the person on the stand at the present time.

The Court: Exhibit 3.

(The file referred to was received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Kidder: I offer at this time the Immigration and Naturalization file, San Francisco, No.

(Testimony of Share Leung Yip.)

1300-100322, relating to Yip She Mang, who will be called as a witness.

The Court: Who is Yip She Mang?

Mr. Kidder: The plaintiff is his uncle, half uncle.

The Court: Exhibit 4.

(The file referred to was received in evidence and marked Plaintiff's Exhibit No. 4.)

The Court: Maybe the government will be willing to stipulate to some facts. Is there any dispute here that the father was either born in this country or was admitted as the son of an American national?

Mr. Dooley: The government will stipulate, your Honor, that the Immigration and Naturalization Service has conceded the birth of the father in this country.

The Court: Can you stipulate how many trips the father took to China and the dates of those trips?

Mr. Dooley: Yes, your Honor. I can stipulate as to that. I mean as to what the records of the Immigration and Naturalization [6] Service show.

The Court: All right.

Mr. Dooley: They indicated that he departed on August 8, 1907, returned June 20, 1908.

Departed May 11, 1913, returned September 28, 1913.

Departed July 10, 1926, returned July 5, 1929, according to the *cards* of the Immigration and Naturalization Service.

The Court: Can you stipulate as to the children?

(Testimony of Share Leung Yip.)

How many children does the record show that the father claims to have had? Is the plaintiff the only child?

Mr. Kidder: No. There are other children. There are four all together.

Mr. Dooley: It is in the Immigration and Naturalization file.

The Court: Can we get the names of the children and the alleged birthdays?

Mr. Dooley: Your Honor, I don't think that should be a matter of stipulation.

The Court: Can we get the names of the children? That isn't going to jeopardize the position of the government. What are the names of the children?

Mr. Kidder: Yip Share, also Ser, evidently, Leung—I am reading now from the record of the arrival of the father on July 5, 1929, at San Francisco.

Yip Jeong Sing. [7]

No. 3 is the plaintiff, Yip—it is spelled M-a-i J-e-r-k.

No. 4 is Yip Ser Wang.

Mr. Dooley: Your Honor, the plaintiff introduced those records into evidence and actually they belong to the defendant. I would like for them to be so marked so that the defendant can withdraw those at the expiration of the period.

The Court: I will make an order that the exhibits may be withdrawn at the conclusion of the case. What difference does it make whether they

(Testimony of Share Leung Yip.)

are introduced in behalf of the plaintiff or defendant?

Mr. Dooley: In attempting to get them from the clerk, the clerk will only permit you to withdraw those exhibits which you have introduced.

Mr. Kidder: I have no objection.

The Court: All right. They will be withdrawn as the plaintiff's exhibits and re-marked as Defendant's Exhibits A, B, C, D, and E.

Direct Examination

Q. (By Mr. Kidder): What is your name?

A. Share Leung Yip.

Q. Where do you live, Mr. Yip?

A. Now?

Q. Yes. [8]

A. 656 Westbourne Drive.

Q. Do you have any names or name other than that of Yip Share Leung?

A. Yes. I have the professional name of George Chann.

Q. What is your business or occupation?

A. I am an artist, a portrait painter.

Q. Of what country are you a citizen, Mr. Yip?

A. I am a citizen of the United States.

Q. Where were you born?

A. I was born in China, Canton, China.

Q. Is that Canton City?

A. Canton—no, Kin Mo Village.

Q. Give us the name of the first village.

A. Now Tao Gong.

(Testimony of Share Leung Yip.)

Q. What is the date of your birth?

A. KS Dynasty 34 years, 11th month and the 1st day.

The Court: Do you know what the English translation is?

The Interpreter: I can't make the translation here, but I can interpret it.

The Court: Well, I don't know whether or not Mr. Dooley is an expert on these dates.

Mr. Kidder: This is only a question of transposition from English to Chinese.

The Court: What was the date? KS 34, 11-1. Let's leave it at that for the present time. [9]

Q. (By Mr. Kidder): Do you know your birth date in English? A. In English?

Q. Or the American date?

A. I don't remember that.

Q. Do you know the year?

A. I am 48 years.

Mr. Kidder: I believe the files already in evidence, your Honor, contain the statements which give us the correct date of birth with the American date, also. Perhaps that will suffice.

Q. What is the name of your father?

A. Yip Dock.

Q. What is the name of your mother?

A. Wong See.

Q. Do you know when your parents were married? A. No.

Q. Do you have any full blood brothers and sisters?

(Testimony of Share Leung Yip.)

A. No. You mean the same mother and father?

Q. The same mother and the same father.

A. No.

Q. Are you the only boy of your parents?

A. Yes.

The Court: Do you mean to say we have a Chinese family here where the father got married twice? [10]

Mr. Kidder: Yes, your Honor.

The Court: That is something new. So there is only one child for the first marriage?

The Witness: That's right.

The Court: And you are it?

The Witness: I am the first child.

The Court: Do you remember your father at all?

The Witness: Yes.

The Court: How old were you when your father died?

The Witness: My father died Chinese Republic 18th year.

The Court: Do you remember your mother?

The Witness: Yes.

The Court: How old was your mother? Is your mother dead?

The Witness: She passed away in Chinese Republic 34.

The Court: Chinese Republic 34?

The Witness: Yes, 34.

The Court: How old were you when your mother died?

The Witness: About 38.

(Testimony of Share Leung Yip.)

The Court: I am not asking you the year. Do you remember when your mother died?

The Witness: I was in this country.

The Court: You were in this country?

The Witness: Yes.

The Court: You weren't home when your mother died?

The Witness: I was not home. [11]

The Court: Were you home when your father remarried?

The Witness: In Kin Mo Village.

The Court: Were you in China?

The Witness: Yes.

The Court: Did you attend the wedding?

The Witness: I was quite small.

The Court: How small?

The Witness: I was seven or eight years of age.

The Court: Is that Chinese or American?

The Witness: How much difference? A few months. Around that age.

The Court: How long did you stay in China after your father married the second time?

The Witness: I stayed in Kin Mo until I was 12 years of age.

The Court: You stayed there until you were 12, and then you left to come to the United States?

The Witness: Yes. I left the village and come to the United States.

The Court: When you came to the United States when you were 12 years of age, you left your mother in the village?

(Testimony of Share Leung Yip.)

The Witness: I left——

The Court: Did you leave your father in the village?

The Witness: My father was here.

The Court: Your father was in this country?

The Witness: Yes.

The Court: Did your mother have any children when you left the village to come to the United States?

The Witness: We have one brother.

The Court: Your mama had one other son when you came to the United States?

The Witness: Yes.

The Court: Who was that?

The Witness: Jeang Shing.

The Court: How old was Jeang Shing when you came to the United States?

The Witness: Well, let's see. He was born in Chinese Republic 3 years, and I was 12 and he was 2 or 3 years——

The Court: 2 or 3 years old?

The Witness: Yes.

The Court: Then when you came to the United States the plaintiff hadn't been born. After you came to the United States when you were 12 years old, did you go back to the village?

The Witness: I go back to China, not the village.

The Court: You did not go back to the village, but you went to China?

The Witness: Yes.

(Testimony of Share Leung Yip.)

The Court: You didn't go and see your mama?

The Witness: No. [13]

The Court: You didn't see the plaintiff Yip Mie Jork, you didn't see him?

The Witness: No.

The Court: Have you ever seen him?

The Witness: Yes, I have seen him.

The Court: When?

The Witness: The last time was in China in, let us say, 1949.

The Court: Where did you see him?

The Witness: In Macao.

The Court: How old was he?

The Witness: Now——

The Court: When you saw him in Macao.

The Witness: 22, or something like that.

The Court: How did you know that this was the boy that was born in the village some 22 years before?

The Witness: My father was in China in Kin Mo Village. I stayed in Canton City and he write to me.

The Court: So all you have is letters written to you?

The Witness: Yes.

The Court: So you didn't see this boy until he was 22 years of age.

The Witness: That's it.

The Court: You saw him in Macao.

The Witness: Yes. [14]

The Court: Was anybody with him?

(Testimony of Share Leung Yip.)

The Witness: Another brother.

The Court: Another brother?

The Witness: Yes.

The Court: Where was the mama?

The Witness: The mama passed away.

The Court: How did you know this was the boy who was born to your mama and who was called Yip Mei Jork?

The Witness: The father write me we have a boy brother.

The Court: Did he ever send you any pictures?

The Witness: Well, at that time he had pictures, but the——

Mr. Kidder: Your Honor, the father died in 1929 in the United States.

The Court: But here is a witness who never saw this boy until he was 22 years of age. How in the world is he going to say this is the boy that was born to his mama.

Mr. Kidder: Only by family association.

The Court: I don't think that's enough. You have got to have something in the family association.

Mr. Kidder: We have both his mother and step-mother dead. The father died in 1929. He died in the United States.

The Court: According to this witness, he saw the plaintiff in Macao in 1949. He was 22 years of age then. This boy could have made an application many years before 1949 to come to the United States. Maybe he did. I don't know. [15]

(Testimony of Share Leung Yip.)

Mr. Kidder: I believe, as a matter of fact, there was something started in 1931, I believe, in this case, but it was not renewed again until after the war in 1950, when a new affidavit was filed, but that was filed by the witness, the half-brother here, because of the parents being deceased, that is the mother, stepmother and father.

The Court: You may proceed and bring out any testimony you think is pertinent to this matter.

Mr. Kidder: Thank you.

Q. Mr. Yip, when did your mother die? What was the name of your mother?

A. Wong See.

Q. When did she die ?

A. She died in Chinese Republic 34 years.

Q. That is your own mother?

A. My stepmother.

Q. I said your own mother.

A. Oh, my mother, Chinese Republic 2nd year.

Q. Do you know what year that is in English or in American? How old were you when your true mother died?

A. About five or six years of age.

Q. Did your father remarry?

A. Yes. He married again.

Q. When did he remarry?

A. Chinese Republic 2nd year. [16]

Q. Is that the same year your true mother died?

A. Yes.

Q. What was the name of his second wife?

A. Wong See again.

(Testimony of Share Leung Yip.)

Q. The same name? A. Yes.

Q. Do you have any brothers or sisters, that is half-brothers or sisters, as a result of that marriage of your father with his second wife?

A. We have three brothers.

Q. What is the name of your eldest half-brother?

A. The second brother is Yip Jeang Shing. The third is Yip Mie Jork.

Q. First tell me when was Yip Jeang Shing born, approximately?

A. I think it is Chinese Republic 3rd year.

Q. Where was he born?

A. Kin Mo Village.

Q. What is the name of your second half-brother? A. Yip Mie Jork.

Q. Is he the plaintiff in these proceedings?

A. Yes.

Q. When was Yip Mie Jork born?

A. Kin Mo Village.

Q. When? [17] A. CR 17 years.

Q. What is the name of your third half-brother?

A. Share Wong.

Q. Where was he born?

A. In Kin Mo Village.

Q. What is the date of his birth?

A. CR 18 years.

Q. When did you first come to the United States? A. I come the first time 1919.

Q. Where did you land?

A. In San Francisco.

Q. You stated that you had made trips to China.

(Testimony of Share Leung Yip.)

Will you tell when you made your first trip to China or first trip to the Orient, let me say?

A. My first trip to China, when I was—CR 15.

Q. Do you know the American year?

The Court: There is about 11 years difference between CR and American. I don't know whether that is true as far as KS is concerned, but I do know it is 11 years as far as CR is concerned.

Mr. Kidder: That is substantially correct, yes. I didn't know it could be figured that way.

The Court: That is what all the testimony is, about 11 years.

Q. (By Mr. Kidder): Then when did you return to the [14] United States?

A. I think CR 20.

The Court: You were in China about five years?

The Witness: About four or five years, yes, at that time.

Q. (By Mr. Kidder)): Where did you live during that period?

A. In China?

Q. Yes. A. In Canton City.

Q. In Canton City? A. Yes.

Q. When did you make your second trip?

A. The second trip to this country in the '20s, CR 20 years.

The Court: You came back in CR 20 and you immediately turned back and went back to China? You just said you went to China in CR 15 and you came back to the United States in CR 20. The question is, when did you go back to China the second time?

(Testimony of Share Leung Yip.)

The Witness: CR 15.

The Court: That is the first time.

The Witness: The second time? The second time is 1947.

The Court: American or Chinese?

The Witness: This is American. This is recently.

The Court: Second time in 1947? [19]

The Witness: 1947, yes.

Q. (By Mr. Kidder): When did you return?

A. In 1949.

Q. Do you know the month?

A. Well, I arrive in San Francisco Thanksgiving.

Q. Thanksgiving Day 1949?

A. Yes, that I remember.

Q. Where were you on that trip?

A. Well, I was around, Hongkong, Macao, Shanghai, Nanking.

Q. What was the purpose of your trip to China at that time?

A. Well, after the war I like to paint China. I am a painter. I paint different scenery and people in China.

Q. Did you exhibit any of your paintings at that time?

Mr. Dooley: I object on the ground it is irrelevant, immaterial.

The Court: Overruled.

Q. (By Mr. Kidder): Did you give any exhibition of your portraits at that time?

A. Yes. I have exhibition in Hongkong.

(Testimony of Share Leung Yip.)

Q. Any other places?

Mr. Dooley: Object, your Honor, on the ground it is immaterial and irrelevant as to his exhibition of paintings.

The Court: Overruled. [20]

Q. (By Mr. Kidder): Any other place you gave exhibits of your paintings?

A. Hongkong the first time, the only time.

Q. Did you ever live in Kin Mo Village?

A. Yes.

Q. When did you live there?

A. Since we moved down from Tao Gong, and I stayed there until 12 years of age.

The Court: I want to ask this witness a question. You said you went to China in 1947 and you came back to the United States in 1949.

The Witness: Yes.

The Court: You also said that you saw the plaintiff in Macao in 1949.

The Witness: Yes, that's it.

The Court: You were in China, then, two years before you saw the plaintiff?

The Witness: Yes.

The Court: This village, the home village where the plaintiff was born, how far is that from Canton City?

The Witness: Quite far, I remember, quite far.

The Court: What do you mean by "quite far"? How many miles?

The Witness: It takes a day in a night boat.

The Court: Up the river? [21]

(Testimony of Share Leung Yip.)

The Witness: There is no way from the village to Canton Village. You have to go to Macao or Hongkong and then go up to Canton City. In China, communication is very poor.

The Court: Do you understand a map?

The Witness: Yes, I can. If I have a map, I can tell you how to go.

The Court: I want to know the approximate location of this village. We have a map here. On this map is Hongkong and here is Macao.

The Witness: Yes.

The Court: And here is Canton.

The Witness: Yes, there is Canton.

The Court: Which way from Macao is the village?

The Witness: This is Macao.

The Court: Macao.

The Witness: It is from here an island, and then you go to Macao, that is overnight, and then to Hongkong right here, and then you go to Canton.

The Court: You go from the village to Macao and take a ferry over to Hongkong and go from Hongkong to Canton?

The Witness: If you want to go to Canton, yes.

The Court: How would you go from Hongkong to Canton?

The Witness: By train or by boat.

The Court: Was your village near the coast?

The Witness: It is on the coast, yes. [22]

The Court: How far from Macao was your village?

(Testimony of Share Leung Yip.)

The Witness: Probably about 15 hours, all night.

The Court: By train or boat?

The Witness: Boat. No train.

The Court: When you were down in China in 1947 to 1949, you said you went to China in 1947, and when did you go to Macao?

The Witness: 1949.

The Court: Did you write to your brother, your half-brother?

The Witness: Yes, I write to my half-brother.

The Court: That you were coming down to Macao?

The Witness: That I was coming to Macao.

The Court: And he met you at Macao?

The Witness: Yes, he met me.

The Court: All right.

Q. (By Mr. Kidder): Tell us where you went, what you did in China during these two years you were there from approximately 1947 to 1949.

A. As I said, I am a painter and I have to have a new subject to exhibit. That is my purpose to go to China, and then I do go to paint in Hongkong, Macao, the village, all the people there, and then I went to Shanghai and Nanking, and Soochow, and all the different provinces, and I paint them, and then I exhibit there. [23]

Q. Exhibit where?

A. In Hongkong and at—well, I would be very thankful to Americans, I am a citizen, and so I have a very wonderful—you ask me what I do, so I try to tell you what I can do in China. So I have

(Testimony of Share Leung Yip.)

an exhibition to show my work in Hongkong, and I bring back here and exhibit here, too.

Q. Did you go to Kin Mo Village when you were in China during this period? A. No.

Q. Were you present in Kin Mo Village when Yip Mie Jork, the plaintiff, was born?

A. No, no.

Mr. Dooley: I object on the ground it has been asked and answered.

The Court: He said he never saw this boy until he was 22 years of age. He was not in China, he said.

Mr. Kidder: Did he say he was not in China or that he was not present?

The Court: He said he had never seen the plaintiff until he was 22 years of age and then saw him in Macao.

Mr. Kidder: We will agree to that, but there was a question whether he was in China at the time or not, and that is what I was bringing out. First, whether he was present, and then if not, where he heard of the birth.

The Court: He couldn't be, because—— [24]

Mr. Kidder: He has testified to being in China between CR 15 and 20.

The Court: But he never went back to the village. He never saw the boy.

Mr. Kidder: We will agree to that. I want to develop where he was at the time of the birth and how he knew of the birth. It has been established for the record he was not present.

(Testimony of Share Leung Yip.)

Q. Where were you residing at the time of the birth of Yip Mie Jork?

A. I don't quite get that.

Q. Where were you living or staying?

A. I was in Canton City.

Q. When did you first learn of the birth of Yip Mie Jork?

A. The same year he was born, my father write to me.

Q. Where were you when you received this letter, in what city were you?

A. I was in Canton City.

The Court: You don't have that letter?

The Witness: I don't have it, sir. It is a long time ago.

Q. (By Mr. Kidder): You testified you didn't see Yip Mie Jork actually until 1949. Did you have any communication with him between the time you first knew of his birth and 1949? [25]

A. You mean before 1949?

Q. Yes. A. No.

Q. Did you communicate with him at all in any fashion?

Mr. Dooley: Objected to on the ground it has been asked and answered.

The Court: Overruled.

The Witness: 1947, I did send a letter through a friend to him.

Q. (By Mr. Kidder): You say you sent a letter through a friend? A. Yes.

(Testimony of Share Leung Yip.)

Q. Was the letter delivered or was it sent through the mail?

A. I give the letter to the friend.

Q. What is the name of the friend?

A. Peter Fong.

Q. Did you deliver anything else?

A. I gave him \$50 cash.

Q. For what purpose?

A. I gave it to him—well, he live near our village and he go back to China and I send some money and a letter to them.

Q. You stated you met Yip Mie Jork for the first time in 1949 in Macao. Will you tell us under what circumstances [26] you met him there at that time?

A. Well, as I said, I have been around the country in China and I thought I would come back to this country very soon, so I should be to see him, so I write a letter from Hongkong and ask him to come over to Macao.

Q. Where did you send this letter?

A. Where?

Q. Yes. A. In Hongkong.

Q. You mailed the letter from Hongkong?

A. Yes.

Q. Where did you send the letter?

A. Kin Mo Village.

Q. What happened after that?

A. After that I go to Macao, I went over to Macao and wait for them and they come to Macao and meet me there.

(Testimony of Share Leung Yip.)

Q. Who do you mean by "they"?

A. My two brothers.

Q. That is your half-brothers?

A. My two half-brothers.

Q. Who are they, give their names, please?

A. Yip Mie Jork and Yip Share Wong.

Q. Where did you meet them in Macao?

A. Well, I met them in Kwok Jai Hotel.

Q. How long did they stay in Macao? [27]

A. They stay about two days.

Q. Then where did they go, if you know?

A. They went back to the village.

Q. Where did you go?

A. I come back to Hongkong.

Q. How did you know this was your brother Yip Mie Jork who came to Macao?

A. He come to see me, and then we began to ask, to talk about family affairs and the mothers, the village, and we talk about these affairs, so naturally we know they was my brothers.

Q. What is the name of the mother of your half-brother? A. Wong See.

Q. Is she living or dead?

A. She passed away.

Q. When did she pass away?

A. CR 34 years.

Q. Where did she die?

A. Kin Mo Village.

Q. Mr. Yip, did you have any photographs taken of you and your half-brother when you were in Macao in 1949? A. Yes.

(Testimony of Share Leung Yip.)

Mr. Kidder: May I have this marked?

The Court: It may be marked.

The Clerk: Plaintiff's Exhibit 5 for identification.

(The photograph referred to was marked Plaintiff's Exhibit 5 for identification.) [28]

Q. (By Mr. Kidder): I now show you Plaintiff's Exhibit No. 5 for identification, being a photograph, and I ask you if you can identify the persons in this photograph.

A. Yes. Those are my two brothers, taken in Macao.

Q. Will you start from the right here and name the persons in this photograph?

A. Yip Mie Jork and myself and Yip Share Wong.

Q. Where was this photograph taken?

A. In Macao in the back of the Kwok Jai Hotel.

Q. On what date, approximately?

A. It is 1949, about the 9th month.

Q. That is the American month or the Chinese month?

A. It is American month.

Mr. Kidder: I offer this Plaintiff's Exhibit 5 for identification in evidence.

Mr. Dooley: No objection.

The Court: It may be received in evidence.

The Clerk: Exhibit 5.

(The photograph heretofore marked Plaintiff's Exhibit 5 was received in evidence.)

Q. (By Mr. Kidder): I now show you a document attached to Plaintiff's Exhibit 1, the passport

(Testimony of Share Leung Yip.)

file of the Department of State, dated April 24, 1950, and I ask you if this is your signature contained therein. A. Yes, sir. [29]

Q. Can you identify this document?

A. Yes.

Q. What is it?

A. This apply to my half-brother to come over here. Here are my pictures and my brother.

Q. Is this an affidavit you filed in behalf of the plaintiff? A. Yes.

Q. I now show you a photograph which appears in Plaintiff's Exhibit 1 depicting three persons. Can you identify the people in this photograph?

A. Myself, Yip Mie Jork, and Yip Share Wong.

Q. Where was this photograph taken, if you know? A. In Macao.

Q. Was that taken at the same time?

A. No.

Q. The same time that 5 was? A. No.

The Court: Was this taken during the same year?

The Witness: It is the same year, same date, but it is different. This is a studio.

Q. (By Mr. Kidder): And the other is taken outside. A. That's it.

Q. But they were taken on or about the same date, is that correct? [30]

A. The same date, that is correct.

Q. I show you another small photograph on the same page in Plaintiff's Exhibit No. 1 and ask you

(Testimony of Share Leung Yip.)

if you can identify this small photograph in the upper right-hand corner.

A. This is myself and this is Mie Jork.

Q. When was this photograph taken?

A. At the same time.

Q. Where? A. In Macao.

Q. I now show you a photograph in the lower left-hand corner of this page in Plaintiff's Exhibit 1. Can you identify the persons?

A. My father.

Q. What is his name? A. Yip Dock.

Q. I now show you a photograph on the lower right-hand corner of this page in Plaintiff's Exhibit 1. Can you identify that person?

A. Yip Share Wong.

The Court: When these photographs were taken in 1949, how old were you?

The Witness: 1949? About how many years, is that it?

The Court: Don't you remember except by adding? Can't you tell me how old you were in any way except by subtracting years?

The Witness: About 40. [31]

The Court: How old was the plaintiff when this picture was taken?

The Witness: 22, about 22.

The Court: How old was his brother then?

The Witness: About 21.

The Court: Had you ever seen either one of these boys up until the time you saw them in 1949?

The Witness: That is the only time I saw them.

(Testimony of Share Leung Yip.)

The Court: The only time you have ever seen them?

The Witness: The only time I saw them in Macao.

The Court: You had never seen them before then?

The Witness: No.

The Court: And you haven't seen them since.

The Witness: No.

The Court: How many days were you in Macao?

The Witness: Two or three days.

The Court: How many days were these boys in Macao?

The Witness: About two or three days.

The Court: Stay in the same hotel?

The Witness: Yes, stay in the same hotel.

The Court: Nobody came along with these two boys, just the two of them?

The Witness: Just the two of them.

The Court: How did you recognize them?

The Witness: They come over and ask me in the hotel and [32] I come down and meet them and we introduced each other, and we go up to the hotel and we talk over family affairs, and I talk about a minute, and I took in the village and so many years I haven't met them, and I have to talk all the things I know, and they answer me, and I have no doubt in my mind it is my brother, so I put him in—I live on the 4th floor, I remember, and they live in the next room to my room. When you

(Testimony of Share Leung Yip.)

talk to your brother, you ask all the questions, all about the village, all the mother, and all those question, and they answer, and in that way I have no doubt in my mind they are my brothers.

The Court: What happened to Yip Share Wong? Did he ever make an application?

Mr. Kidder: Yip Share Wong?

The Court: The younger brother?

Mr. Kidder: I don't know. I would be glad to ask the witness.

The Court: Did he ever try to come to the United States?

Mr. Kidder: I don't know. Perhaps the witness knows.

The Court: Where is the fourth boy?

The Witness: In the village now.

The Court: Did he ever make an application to come to the United States?

The Witness: No. I haven't made application for him to come over here. [33]

Q. (By Mr. Kidder): Can you tell us why you haven't made such an application?

A. We do have some land in China, see, and then one has to take care of it, the house and the land. My father left and therefore he farm the home. One come over and I just apply for him to come over.

Q. How much money do you make as a portrait painter?

A. Well, I paint pictures—well, three or four hundred, four or five hundred—if you want to know

(Testimony of Share Leung Yip.)

my work, I exhibit in almost every museum in the country. I don't want to brag myself, but I am a painter, and I have been painting. I painted General MacArthur.

Q. I want to know approximately what is your income as a portrait painter.

A. Unfortunately, artists have no definite income.

Q. About how much?

A. I make a living, about average, I make two or three thousand dollars a year, with a portrait from \$200 up.

Mr. Kidder: I have no further questions of this witness, your Honor.

(Witness excused.)

The Court: We will take our afternoon recess. We will recess until 20 minutes after 3:00.

(Recess.) [34]

SHE MANG YIP

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: She Mang Yip.

Direct Examination

Q. (By Mr. Kidder): Mr. Yip, will you speak up so I can hear you and so the court and counsel can hear you? A. O.K.

Q. I believe we can conduct this in English. If

(Testimony of She Mang Yip.)

you don't understand, you turn to the interpreter there and perhaps he will explain the question to you, but we will try it in English.

Where do you live, Mr. Yip?

A. In San Francisco, in the Frank Hotel. It is on Kearny Street.

Q. What is your business or occupation? What do you do?

A. I am working in the newspaper office.

Q. In what office? A. Newspaper.

Q. Do you have any other occupation?

A. I go to school.

Q. Where do you go to school?

A. I go to school in the morning and I work part time [35] on the newspaper.

Q. Where do you go to school? A. Cal.

Q. University of California? A. Yes.

Q. At Berkeley? A. Yes.

Q. Where were you born?

A. China, Canton.

Q. Canton City? A. Yes, city.

Q. What is the date of your birth?

A. CR 15, December 15th, the 12th month in China, you know, the 12th month and the 15th.

Q. Do you know what American date that is?

A. Oh, yes.

Q. What is it?

A. January 7th, because I go to school and I have to use these dates, so I know.

The Court: January 7th what year?

Q. (By Mr. Kidder): What year?

(Testimony of She Mang Yip.)

A. 1928.

Q. You said you were born in Canton City?

A. Yes.

Q. Of what country are you a citizen? [36]

A. United States.

Q. How did you become a citizen of the United States?

A. Oh, because my father is a citizen.

Q. What is the name of your father?

A. Yip Share Leung.

Q. Is he the person who just testified before you? A. Yes, my father.

The Court: Was that your father just testified?

The Witness: That's right, my father.

Q. (By Mr. Kidder): What is the name of your mother? A. My mother?

Q. Yes. A. Chan Shee.

Q. Where was she born? A. Canton.

Q. Canton City? A. Yes.

Q. Is your mother living? A. No.

Q. When did your mother die?

A. It is in the wartimes, CR 33, around CR 33.

Q. Where did she die?

A. In Kin Mo Village.

Q. Have you ever lived in Kin Mo Village?

A. Yes, once, just a few days. [37]

Q. Have you ever actually lived in Kin Mo Village?

A. Yes. We have a home there. That is my uncle's home.

Q. When did you live in Kin Mo Village?

(Testimony of She Mang Yip.)

A. It is in the beginning of the war. It is about 1938, something like that.

The Court: Is that American?

The Witness: Yes.

Q. (By Mr. Kidder): How long did you live in Kin Mo Village?

A. Just a few days, about three or four days, something like that.

The Court: Three or four days?

The Witness: Yes, three or four days.

Q. (By Mr. Kidder): Where was your home before you went to Kin Mo Village, where did you live? A. In Canton.

Q. In Canton City?

A. Yes. We lived in Canton in the wartime beginning, and then we left Canton to go to Macao for a few months, and then we went to the village.

The Court: What year was this you went to the village for three or four days, what year?

The Witness: I think it is 1938, I think, because——

The Court: Can you give me the CR date?

The Witness: The CR is 27, about 27, yes. [38]

Q. (By Mr. Kidder): How old were you at that time? A. About 11 or 12.

Q. With whom did you go to the village, if anyone? You say you went to Kin Mo Village for three or four days. Who went there with you, if anyone?

A. Oh, my mama and my two brothers and sister.

(Testimony of She Mang Yip.)

Q. What were the names of your two brothers who went with you?

A. Yip Sue Kong and Yip See Sing.

Q. And the name of your sister?

A. Yip Lei Ha.

Mr. Kidder: Can you spell that, Mr. Interpreter?

The Witness: You can only spell it according to the sound.

The Interpreter: Different words have many pronunciations.

The Witness: Yes.

The Interpreter: L-a or L-a-y or L-a-i. It depends on the dialect, more or less, or L-e-i H-a-r.

Q. (By Mr. Kidder): These two brothers and the sister you have named, are they your full-blood brothers and sister? A. Yes.

Q. The same father and the same mother?

A. Yes, and I have—yes, that's right. You asked me the names of the brothers and sister. At that time we went [39] back to the village, the brothers and sister.

Q. Where did you stay in the village at that time?

A. Stay in my uncle's house, my grandma's house.

Q. Your grandmother's house? A. Yes.

Q. What was the name of your grandmother?

A. Grandmother is Wong See.

Q. You testified you only stayed there three or four days, is that correct? A. Yes.

(Testimony of She Mang Yip.)

Q. Who lives in your grandmother's house at the time, if anyone, besides your mother?

A. I think——

Q. Who lived there at your grandmother's house at the time?

A. My grandmother and the uncles.

Q. How many uncles?

A. Oh, at that time I think two of them, I think.

Q. What were their names?

A. You mean the name of my uncles?

Q. Yes. A. Yip Mie Jork.

Q. Who else? A. Yip Share Wong.

Q. How old were these two uncles at the time you visited [40] there?

A. At that time, my feeling, you know, at that time, the one is just a little bit higher than me, I think, and the other one is smaller, and I know they are just around my age, but they tell me one I am older than him, and the other one I am older than him about two years, I think.

Q. Are you older or younger than Yip Mie Jork? A. I am older.

Q. By about how much?

A. Just one year.

Q. What did you do in the village during the time you were there for three or four days?

A. Usually we just play around in the house with my uncles.

Q. Did you play with your uncle Yip Mie Jork?

A. Oh, yes, and Share Wong, too.

(Testimony of She Mang Yip.)

Q. Was there any incident that happened at that time that recalls this event to your mind?

A. I remember once we play together and he pushed me in the back, and then I fell down and something hurt me here, see, so I hurt here, and my mama put something in here, see, and that is why after a few days my mama take me to go back to Macao. Can you hear me?

Q. Do you have any mark from that incident?

A. Yes, I think here. [41]

Q. You are pointing to your right eyebrow?

A. Yes.

Q. The outside edge? A. Yes.

Mr. Kidder: May the record show what appears to be a scar at the edge of his right eyebrow?

The Court: The record may so show.

Q. (By Mr. Kidder): Where did you go after you left the village after this three or four days' stay, where did you go?

A. We went back to Macao.

Q. To Macao? A. Yes.

Q. Was that where you were living at the time?

A. Yes.

Q. You lived there with your mother?

A. Yes.

Q. And brothers and the sister that you named?

A. Yes.

Q. When did you come to the United States?

A. It is 1949, November. I forget the date. Yes, it was Thanksgiving Day, on that day.

(Testimony of She Mang Yip.)

Q. With whom did you come to the United States, if anyone?

A. My father and my stepmother.

Q. Your stepmother? [42] A. Yes.

Q. Has your father remarried?

A. What?

Q. Did your father remarry? A. Yes.

Q. How many times did you see your uncle Yip Mie Jork, how many times?

A. I think only once.

Q. Was that on the occasion you have spoken of at the village? A. Yes.

Q. I show you a photograph attached to Plaintiff's Exhibit 1, that is, incorporated therein, with a series of photographs, and point to the picture in the upper left-hand corner and ask you if you can identify the persons in this photograph.

A. Yes.

Q. Can you identify these people?

A. Yes, I know these people.

Q. Starting from the right of the photograph who is this person? A. This one?

Q. Yes. A. Mie Jork.

Q. Who is the person in the middle? [43]

A. My father.

Q. Who is the person on the left?

A. Share Wong.

Q. I show you another photograph marked as Plaintiff's Exhibit 5 and ask you if you can identify the persons in that photograph beginning on the right of the photograph.

(Testimony of She Mang Yip.)

A. This is Mie Jork, my father, and Share Wong.

Q. Where have you lived since your entry into the United States in 1949, where have you lived?

Mr. Dooley: Objection on the ground it is immaterial, irrelevant, incompetent.

The Court: Overruled.

Q. (By Mr. Kidder): Where have you lived since you came to the United States in 1949? Have you lived in the United States ever since you came here in 1949?

A. Oh, yes. In San Francisco.

Q. You haven't gone back to China since 1949?

A. No.

Mr. Kidder: Nothing further.

The Court: Step down.

(Witness withdrawn.)

The Court: Call in the next witness. [44]

PETER FONG

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Peter Fong.

Direct Examination

Q. (By Mr. Kidder): Where do you live, Mr. Fong?

A. I live at 9851½ Yale Street, Los Angeles.

Q. Where were you born?

(Testimony of Peter Fong.)

A. I was born in On Ngai Village, Canton.

Q. In what province? A. Canton.

Q. What is the date of your birth?

A. August 20, 1920.

The Court: Is that the English date?

The Witness: Yes.

The Court: August 20th.

Q. (By Mr. Kidder): When did you first come to the United States? A. 9-2-23.

Q. Have you lived in the United States ever since that time, has your home been here?

A. With the exception of two and a half years.

Q. Where were you then? [45]

A. I went back first to China in 1932 and came back in 1934 and again went back there in 1947, and the last time I went back in 1951.

The Court: You went in 1947. When did you come back?

The Witness: The same year.

The Court: The same year?

The Witness: Yes, sir.

The Court: The third time was when?

The Witness: 1951.

The Court: When did you come back?

The Witness: In 1951?

The Court: Yes.

The Witness: About a month later.

The Court: A month later?

The Witness: One month later.

Q. (By Mr. Kidder): How long were you in China in 1947? A. Three months.

(Testimony of Peter Fong.)

Q. Of what country are you a citizen, Mr. Fong?

A. United States.

Q. How did you become a United States citizen?

A. I was naturalized.

Q. When? A. In 1947.

Q. Where? A. In Los Angeles. [46]

Q. In the United States District Court?

A. Yes, sir.

Q. Are you acquainted with a person by the name of Yip Share Leung? A. Yes, sir.

Q. When did you first meet him?

A. In Los Angeles about 1946, when I first came down here.

Q. Where were you living before you came to Los Angeles? A. San Francisco.

Q. Where did you meet Mr. Yip Share Leung?

A. I was introduced to him through a mutual friend, Mr. Chin.

Q. Mr. Chin? A. Yes, sir.

Q. Where does Mr. Chin live?

A. He has an art curio shop in New Chinatown.

Q. Do you know the name of the shop?

A. Sincere Gift Shop.

Q. How often did you see Mr. Yip Share Leung?

A. I would say about once a week or so.

Q. Where did you see him?

A. Mostly in Sincere Gift Shop.

Q. You testified you went back to China about 1947. Do you recollect the month, approximately?

(Testimony of Peter Fong.)

A. I left San Francisco approximately the end of September.

Q. Where did you go on that trip to China?

A. I went back to Hongkong and then I went back to my home village.

Q. That is the village where you were born?

A. Yes, sir.

Q. Did you ever hear of Kin Mo Village?

A. Yes, sir.

Q. Where is Kin Mo Village?

A. About one English mile from my home place.

Q. Did you have a conversation with Mr. Yip Share Leung before you left the United States or Los Angeles about September 1947?

A. Yes, sir.

Q. Did he give you any articles to carry on your trip?

A. Yes, sir.

Q. What did he give you?

A. He gave me a letter and \$50.

Q. To whom was the letter addressed, if you know?

A. Addressed to his brother.

Q. What was the brother's name?

A. Yip Mie Jork.

Q. After you arrived in China, what did you do with this letter and money? [48]

A. I took it to Kin Mo Village.

Q. What happened there?

A. I gave it to Yip Mie Jork personally.

Q. Did you know Yip Mie Jork before you went to the village?

A. No, sir.

Q. Did you know the Yip family lived in Kin

(Testimony of Peter Fong.)

Mo Village at the time? A. I heard about it.

Q. Through whom?

A. Through Yip Share Leung.

Q. You stated you delivered this money and letter to Yip Mie Jork. Exactly where did you deliver this money and the letter?

A. At his house, his home.

Q. Where was this located?

A. Kin Mo Village.

Q. Did you have any difficulty finding Yip Mie Jork? A. Not very much.

Q. What did you do?

A. When I got there first I asked the way to his home and it turned up not very far from the gate where I was.

The Court: How old were you when you made this trip?

The Witness: In 1947, I was about 27 years old, sir.

The Court: How old was Yip Mie Jork when you saw him? [49]

The Witness: I didn't ask him, sir, but he was younger.

The Court: He was younger than you?

The Witness: Yes, sir.

The Court: Was he still a boy or was he grown up?

The Witness: I would say he was almost grown up by then.

The Court: Almost grown up?

(Testimony of Peter Fong.)

The Witness: Yes, sir. I did not ask him his age.

The Court: How long did you visit with him at this time?

The Witness: About 15 minutes.

The Court: About 15 minutes?

The Witness: Yes, sir.

The Court: That is the only time you saw him?

The Witness: Yes, sir.

Q. (By Mr. Kidder): Did you meet any other person at the house of Yip Mie Jork when you visited there in 1947?

A. Another fellow, a younger fellow there.

Q. Do you know who he was?

A. Yip Mie Jork told me it was his youngest brother.

Q. Do you know his name?

A. I don't think I can remember that.

Q. Was there any other person in the house that you met at that time? A. No, sir.

Q. I now show you a photograph attached to Plaintiff's Exhibit 1 of three persons, and ask you if you are able to [50] identify any of these three persons. The photograph is in the upper left-hand corner of the series of photographs. Can you identify any of these people in this photograph?

A. This is Yip Share Leung.

Q. The one in the middle? A. Yes.

Q. Can you identify anybody else?

A. This is Yip Mie Jork.

Q. The one on the right is Yip Mie Jork?

(Testimony of Peter Fong.)

A. Yes.

Q. Do you recognize the other person?

A. This one could be the younger brother, but I wouldn't swear to it, sir.

Q. You are not certain who that is?

A. No, sir.

Mr. Kidder: That's all. The plaintiff rests.

The Court: May I ask this witness a question?

Mr. Kidder: Certainly.

The Court: You were talking about where you were born. Is that close to Canton?

The Witness: About 40 miles from Hongkong, sir.

The Court: About 40 miles from Hongkong?

The Witness: Yes, sir.

The Court: Which way from Hongkong?

The Witness: Oh, I would say northeast. [51]

The Court: To go from Hongkong to your village, did you go by boat or train?

The Witness: Boat, sir.

The Court: What river did you cross?

The Witness: I wouldn't know, sir. My brother took me.

The Court: In going to your village, did you go to Canton first?

The Witness: No, sir. Kowloon.

The Court: Did you go to Macao?

The Witness: When I came back to Hongkong, I went by way of Macao.

The Court: You go to Hongkong, and you go

(Testimony of Peter Fong.)

to China, and then you go from Hongkong to your village.

The Witness: Yes, sir.

The Court: You say your village was northwest?

The Witness: No. Hongkong is northwest.

The Court: Did you have to cross any streams or bays?

The Witness: Yes, sir.

The Court: Do you know what stream?

The Witness: I wouldn't know, sir.

The Court: How old were you?

The Witness: I was about 27.

The Court: You say you went back to the village in 1947?

The Witness: Yes.

The Court: How old were you then? [52]

The Witness: About 27.

The Court: You go to Hongkong. From Hongkong you go to your village. You are 27 years of age. How did you go?

The Witness: By steamboat.

The Court: Where do you take the steamboat to?

The Witness: Steamboat in Kowloon. That is the inland city there. I change boats there.

The Court: Then where did you go?

The Witness: From Kowloon I take another steamer to my village.

The Court: To your village?

The Witness: That is the marketplace there.

(Testimony of Peter Fong.)

The Court: How far is your village from Canton?

The Witness: About 40 miles.

The Court: How far is it from Macao?

The Witness: I would say about the same distance. You can take either way.

The Court: Did you ever see a map of Hongkong Harbor?

The Witness: Oh, yes.

The Court: I want to show you this map. Here is Hongkong. Here is Canton.

The Witness: Yes.

The Court: Where is your village, where was your village?

The Witness: Chung Shan District, about there.

The Court: It would be north of Macao? [53]

The Witness: I wouldn't say north of Macao. Right here; about northwest of Macao.

The Court: Going to Hongkong from your village, you didn't take the steamer to Macao.

The Witness: Yes, to Kowloon.

The Court: Your village was how far?

The Witness: My village is inside the Chung Shan District.

The Court: You said your village was how far from Kin Mo?

The Witness: About one mile, English mile, sir.

The Court: How far was your village from the coast, seacoast?

The Witness: You mean Hongkong or Kowloon?

The Court : Down to the seacoast. You say your

(Testimony of Peter Fong.)

village is up in here. How far was it down to the ocean?

The Witness: About 40 miles, sir.

The Court: Do you want to look at the map?

Mr. Kidder: Yes.

The Court: It is a National Geographic map.

The Witness: If you ask me about the distance, I wouldn't know, sir.

Q. (By Mr. Kidder): Where did you say your village is located?

A. Chung Shan District.

The Court: About halfway between Macao and Hongkong. [54]

The Witness: So when we go to Hongkong, we either take the boat to Kowloon or from there to Hongkong, or we go to Macao and from there take a boat to Hongkong, either way we can go.

Q. (By Mr. Kidder): Is it possible to get to your village or in the vicinity of Kin Mo Village by going from Hongkong to Macao and then to the village? Is it possible to go from here to here?

A. Yes, sir.

Q. How do you travel?

A. My brother took me. He bought all the tickets. I wouldn't know anything about that. I was away almost 15 years.

Q. 1947 how did you travel? Did you go back by yourself? A. Yes.

Q. How did you travel? Did you arrive at Hongkong? A. Yes.

(Testimony of Peter Fong.)

Q. How did you get to the village?

A. By boat to Kongmoon, the city there on the coast. I couldn't find it on the map there.

Q. Then did you take the boat——

A. You can take a steamboat or junk. I don't know how to describe it.

Q. How did you go this last time from Hongkong to your village? [55]

A. In 1947?

Q. Yes. A. By boat.

Q. All the way? A. All the way.

Q. When you get off the boat, how far is it to your village?

A. I would say about two or three miles.

Q. Two or three miles. In other words, you can travel by boat almost all the way to your village?

A. Yes, sir. It is a little rivulet or something like that.

Q. Do you know the name of it?

A. No, sir.

Q. Is it possible to travel from Hongkong to Macao and then to that vicinity?

A. Oh, yes. I did that once.

Q. By boat?

A. Yes, sir. It took about three hours from Macao to Hongkong.

Mr. Kidder: The plaintiff rests.

(Witness withdrawn.)

The Court: It is 4:00 o'clock, but I would like to call the first witness back to the stand. [56]

SHARE LEUNG YIP

recalled as a witness, having been previously duly sworn, was examined and testified further as follows:

Examination

Q. (By the Court): I want to be sure I understand what you said.

A. About the map?

Q. Yes. A. Yes.

Q. You told me before when you were at Hongkong you went over to Macao and I asked you where the village was, and you told me it was down in here.

A. Say this is Macao and there is a little island here some place. Well, actually it isn't too far, but there is some boat, a Chinese boat, and there you take the boat overnight.

Q. It is down here on the coast somewhere?

A. Yes, it is part of Chung Shan, you know, Macao, Chung Shan District. It is around some place right here.

Q. Down here on the coast? A. Yes.

Q. Do you know where Canton is?

A. Yes.

Q. Your village was not between Canton City and Macao.

A. You cannot go there (indicating). [57]

Q. You told me the village was down there.

A. But there is no boat to go there. You have to go to Macao, then Canton, or go to Hongkong to Canton.

(Testimony of Share Leung Yip.)

Q. What was the name of this last village? Do you know this On—— A. On Ngai.

Q. On Ngai, do you know where that is? Do you know the boy who was here?

A. Yes.

Q. What is his village? A. On Ngai.

Q. How far was that from your village?

A. About one English mile, one mile.

Q. Where was that on this map?

A. Well, here is Macao, and On Ngai is up here, up north from my village, northeast or something.

Q. His village was down in here, was it?

A. Yes.

The Court: I wanted to be sure as to what you were testifying to before we quit tonight. I wanted to know for sure.

Mr. Kidder: Let me ask a question.

Further Direct Examination

Q. (By Mr. Kidder): Mr. Yip, this is Macao?

A. Yes. [58]

Q. Apparently north of Macao is the City of Canton, is that right? A. That's right.

Q. Where is the village with respect to these two cities?

A. In between there. It is on the coast. The village is on the coast. Macao is on the coast and it is on the left inside coast, see. This is where the village is.

Q. What was the nearest large city to the village? A. Macao.

(Testimony of Share Leung Yip.)

Q. Macao is the nearest large city?

A. Yes.

Q. How long did it take to get from the village to Macao?

A. Village to Macao, overnight on boat.

Q. How long did it take to go from the village to Canton?

A. You have to go to Macao first.

Q. Go to Macao first?

A. Yes, that is definite.

Q. Why?

A. Because you have no boat, no boat from my village to Canton direct. You have to go to Macao to go to Canton or go to Macao and then to Hong-kong, or you take a boat or train to Canton.

Q. How long did you say it takes to go from the village [59] to Macao?

A. About overnight.

Q. And by what means? A. Boat.

Q. Which direction does the boat sail, if you know?

A. That is something I don't know.

Mr. Kidder: I will withdraw that.

The Court: These witnesses are pretty good, but I don't think they are that good.

Q. (By Mr. Kidder): Let me ask you this. Is this village south of Macao or is it between Canton and Macao?

A. Well, right here, it is some place here, but I left the village for so long, what the direction is,

(Testimony of Share Leung Yip.)

I don't know, but that is my imagination to be here, because I—how do I know exactly when I was 12 years of age.

Q. When were you last in the village?

A. 12 years of age.

Q. When you were 12 years of age?

A. Yes.

The Court: It is 4:00 o'clock and I suppose we can't complete this case tonight, so we will recess until 10:00 o'clock tomorrow morning.

(Whereupon, an adjournment was taken to 10:00 o'clock a.m., Tuesday, May 3, 1955.) [60]

Tuesday, May 3, 1955, 10:00 a.m.

The Clerk: No. 2, 14967-HW Civil, Yip Mie Jork vs. John Foster Dulles, Secretary of State, further trial.

The Court: Mr. Kidder, last night you said you rested, but I won't hold you to that.

Mr. Kidder: We rest.

SHARE LEUNG YIP

called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination

Q. (By Mr. Dooley): Mr. Yip, I understand from your testimony yesterday that you were quite young when your father remarried, is that correct?

A. My father what?

Q. When your father remarried.

A. Quite young, yes.

(Testimony of Share Leung Yip.)

Q. I understand that you don't recall the date of his remarriage, is that correct?

A. That is correct.

Q. And you left Kin Mo Village when you were 12 years of age, is that correct?

A. That is correct. [62]

Q. And you went back to China in 1926.

A. 1926, correct; CR 15, yes.

Q. And you came back to the United States in 1931, is that correct?

The Court: No. He returned in 1929. He went in 1926 and came back in 1929, according to my record.

The Witness: The Republic of China, it is 20 years.

Mr. Dooley: My recollection, your Honor, is that he said CR 20, which, according to the book, is 1931.

The Court: 1931? Let me have the file.

Q. (By Mr. Dooley): Between 1931 and 1947, you did not receive any correspondence from Yip Mie Jork, is that correct?

A. Well, in wartime, no, but I received after the war, I received a letter that he was in Hongkong now.

Q. That was at the time that Yip Mie Jork was in Hongkong, is that correct?

A. That is correct.

Q. In what year was that?

A. Well, 1952, 1953 and 1954 I received some letters from him.

(Testimony of Share Leung Yip.)

Q. So the first time you received correspondence from Yip Mie Jork was in 1952.

A. Yes, around that time.

Q. That was after you had seen Yip Mie Jork in Macao in 1949. [63]

A. Yes, that is it.

Q. You didn't receive any photographs of Yip Mie Jork between 1931 and 1949?

A. No. Only I have the photo I took in 1949.

Q. 1949 was the first time you had ever seen a photograph?

A. Yes.

Q. In 1947, you made a trip to China again, is that correct?

A. 1947, yes.

Q. What month did you leave in 1947, Mr. Yip?

A. I think about the 10th month of 1947 I go back. I arrived at Hongkong, I think it is September—December.

Q. And had you planned this trip in advance?

A. I always like to go back to China to paint, as I said yesterday, but in the wartime I cannot go until after the war.

Q. And when did you decide to make the 1947 trip?

A. I make my decision around before just about a couple of weeks, three weeks before I left San Francisco.

Q. When was the first time you wrote a letter to Yip Mie Jork?

A. Well, about a few days I left Hongkong to Macao.

The Court: You didn't write until after you got to Hongkong?

(Testimony of Share Leung Yip.)

The Witness: What's that? [64]

The Court: You didn't write until after you got to Hongkong?

The Witness: No.

Q. (By Mr. Dooley): And what year was that?

A. 1949.

Q. Did you receive any letters between 1931 and 1947 from your stepmother?

A. This means—what years, sir?

Q. From 1931 to 1947.

A. No. In 1931 I was in Canton, yes, and at that time I receive a letter.

Q. After your return to the United States in 1931, did you receive any more letters?

A. No.

Q. Did you receive any letters from Yip Share Wong between 1931 and 1947? A. No.

Q. You testified yesterday you gave \$50 to Mr. Peter Fong, is that correct?

A. Yes, that's right.

Q. Where were you at the time you gave him that \$50?

The Court: Was it \$50?

The Witness: Yes, it was \$50.

The Court: I thought Peter Fong said it was \$25. My notes say \$25. [65]

Mr. Kidder: It was because of the pronunciation, your Honor. I thought at first he said 15 and it wasn't quite distinct.

The Court: It was \$50, was it?

The Witness: \$50.

(Testimony of Share Leung Yip.)

The Court: All right.

Q. (By Mr. Dooley): Where were you at the time?
A. In New Chinatown.

Q. That was in the United States?

A. United States, that's right, in Los Angeles.

Q. Did you give him anything else besides the \$50?
A. A letter.

Q. Mr. Yip, how did you know that Yip Mie Jork was still in Kin Mo Village?

A. Why not? He was in China. I left China and they went back to the village, Kin Mo Village.

Q. You had never seen Yip Mie Jork.

A. I saw Yip Mie Jork.

The Court: When did you see him?

The Witness: In 1949.

Q. (By Mr. Dooley): That was after you sent the money, is that correct?
A. After?

Q. After, it was only after you gave the money to Mr. Peter Fong that you saw Yip Mie Jork. [66]

A. I was here. I gave the money to Peter Fong to send back to him.

The Court: According to your testimony yesterday, you returned to China in 1947.

The Witness: Yes, sir.

The Court: You couldn't tell us the date, the month. You just said it was sometime in 1947. According to Peter Fong, he went to China in 1947, too.

The Witness: Yes.

The Court: Did he go before you or after?

The Witness: He go before me. You want me

(Testimony of Share Leung Yip.)

to give the association? I met him in Chinatown and then he told me he go back to China soon. I think, well, at that time I, you know, I didn't make up my mind to go back or not, and then I give him \$50 and the letter to him.

The Court: How many months before you went to China did Peter Fong go to China?

The Witness: I think we both went in about a month.

The Court: One month apart?

The Witness: Yes.

The Court: In other words, you gave to Peter Fong \$50 to take to your brother in China and you went to China yourself a month later.

The Witness: That is how it is, yes.

Q. (By Mr. Dooley): How did you know Yip Mie Jork needed [67] money?

A. Well, in Chinese custom they send the money anyway. So I send \$50. I know in the village——

The Court: This is the first money you sent, isn't it?

The Witness: Yes.

The Court: You never sent any money between 1931 and 1947?

The Witness: That is wartime. It can't go through.

The Court: You never sent any money at all until you sent this \$50 in 1947?

The Witness: Yes, that's it.

Q. (By Mr. Dooley): You heard no word at

(Testimony of Share Leung Yip.)

all from Yip Mie Jork between 1931 and 1947, isn't that right?

The Court: He has testified to that two or three times. Mr. Dooley, let's don't repeat. I have got an attorney that is waiting here.

Q. (By Mr. Dooley): Did you give Mr. Fong any money for anyone else in China?

A. Well, I send the \$50 to my two half-brothers, that's all.

Q. At that time didn't you have some children in China, Mr. Yip? A. What?

Q. Did you have any children in China at that time? A. Yes. [68]

Q. You didn't send any money to your children?

A. Well, yes, I did, after the war.

Q. You didn't give any money to Mr. Peter Fong to give to your children?

A. No, not for the children.

Q. In 1947, after you got to China, did you see Mr. Peter Fong in China? A. No.

Q. When was the next time you heard from Mr. Peter Fong?

A. Until now? When he came back from China, I was in this country.

Q. You didn't write to him? A. No.

Q. And he didn't write to you? A. No.

Q. How did you know that Yip Mie Jork received the \$50, Mr. Yip?

A. Well, I trust a friend, and I knew he received the \$50 I sent back.

(Testimony of Share Leung Yip.)

Q. But he didn't write and tell you he had delivered it. A. No, he didn't.

Q. After you got to China, it was two years before you saw Yip Mie Jork, is that correct?

A. The last time, yes, I see him in 1949. [69]

Q. Your mother was buried in Kin Mo Village, was she not? A. She was.

Q. And you have a wife that has died, too.

A. My wife passed away, too.

Q. She is buried in Kin Mo Village?

A. Yes.

Q. How long would it have taken you, Mr. Yip, to go to Kin Mo Village?

The Court: From Hongkong?

Q. (By Mr. Dooley): From Hongkong.

A. Well, from Hongkong I go to Macao, four or five hours, and then from Macao you take a boat overnight.

Q. Didn't you wish to see the grave of your wife? A. No.

Q. Mr. Yip, are you sure that you saw Yip Mie Jork in 1949? A. Positive, yes.

Q. Have you ever testified differently at any other time?

A. No. I see him in Macao in 1949.

Q. Do you remember testifying before the Immigration Service in 1949?

A. I don't know what they put down.

The Court: Those are already in evidence. [70]

Mr. Dooley: Yes, your Honor. I would like to question him concerning this.

(Testimony of Share Leung Yip.)

The Court: He has testified he talked to his brother. If you have got any testimony to the contrary, all you have to do is read it.

Mr. Dooley: I will do that, your Honor. Your Honor, I would like to read the testimony given by Yip Share Leung December 8, 1949, before the Immigration and Naturalization Service. I will read three questions and answers.

“Q. Where is your oldest half-brother, Yip Jeang Shing at the present time?

“A. I don’t know. I didn’t see him in China on this trip.

“Q. Where is your half-brother Yip Mie Jork?

“A. He is in Kin Mo Village, but I didn’t see him on this trip either.

“Q. Where is your half-brother Yip Share Wong at the present time?

“A. He is also in the village. However I didn’t see him.”

The Witness: I might say what I have seen in Kin Mo Village. I never saw them in the village, but I see them in 1949 in Macao, but they didn’t ask if I see them in Macao.

Mr. Dooley: No further questions. [71]

Redirect Examination

Q. (By Mr. Kidder): Mr. Yip, where were your children residing in 1947 when you went to China? A. Where? They were in Canton.

Q. In Canton City? A. Yes.

Q. How soon did you see your children after your arrival in China?

(Testimony of Share Leung Yip.)

A. Well, when I write to them immediately, they come down to see me.

Q. Where did they come to see you?

A. They come to Hongkong to see me.

Q. You met your children in Hongkong?

A. Yes, sir.

Q. Did you see your children at any other time during the time you were in China between 1947 and 1949?

A. No. I see them when I first arrive in Hongkong.

Q. You did testify that you saw them just before you left China to return to the United States, is that right? A. Yes.

Q. Have you been supporting these children in China? A. No.

Q. Do you send money to these children in China? A. No. [72]

Q. By whom are they supported?

A. I understand they are working in Canton.

Q. They support themselves?

A. They support themselves.

Q. Did you testify that you left the United States in 1947 about December? A. Yes.

Q. That is when you boarded the ship in San Francisco? A. Yes.

Q. Do you know when Peter Fong left the United States, the date when he left the United States before you did in 1947?

A. Yes. I think he left before I did.

Q. Do you know when he left?

(Testimony of Share Leung Yip.)

A. I don't know, but he told me at that time he would go back to China.

Q. Do you know whether he had returned to the United States before you left in December 1947? A. No.

Q. You testified you did not go to Kin Mo Village on this trip to China between 1947 and 1949?

A. No.

Q. Is there any reason why you did not go to the village?

A. Well, I plan to go back to China and then I go to paint, and I go to paint in the city and then I go to Shanghai [73] immediately and Nanking and return to Hongkong.

Q. The purpose of your trip was to paint, is that correct? A. To paint, that is correct.

Q. There has been read to you certain questions and answers from Plaintiff's Exhibit No. 4, which questions and answers are contained on page 3 of this transcript of statement. Is this your signature there? A. Yes, sir.

Q. Was this signed by you?

A. It is signed by me.

Q. Was it signed by you after it was transcribed? A. After I gave my statement.

Q. Was it read to you before you signed it?

A. No.

Q. The photographs that are in evidence, particularly Plaintiff's Exhibit 5, was that taken in Macao?

A. Yes, taken in Macao, the picture.

(Testimony of Share Leung Yip.)

Q. Those pictures were taken with your half-brother, is that right? A. Yes.

The Court: That was testified to yesterday. No questions were asked on cross examination about these photographs. There is no contradiction of the testimony of this witness about the photographs.

Mr. Kidder: I have no further questions.

(Witness excused.)

SHE MANG YIP

called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination

Q. (By Mr. Dooley): Mr. Yip, yesterday I believe you testified you went to Kin Mo Village in about 1938, is that correct? A. I think about.

The Court: CR 27?

The Witness: Yes, I think so.

Q. (By Mr. Dooley): You are not sure?

A. Well, I come from there because beginning of the wartime, the second time, see. It is 1937, and then because of wartime we have to leave there, see, and when we leave there, the next year we leave there is 1938. It must be CR 27.

Q. You were born in 1928, is that correct?

A. Yes.

Q. So yesterday you testified you were 11 or 12 years of age. Was that American or Chinese?

A. 11 and 12? You mean the age?

(Testimony of She Mang Yip.)

Q. At the time that you went to Kin Mo Village, approximately how old were you? [75]

A. Oh, I am about 11 or 12, around there. You mean counting from my birthday?

Q. Yes.

A. Yes. I don't have to at that time remember how old I am at the time, so you ask me and I just remember about the time.

Q. Where were you living at the time you started the trip?

A. What? Oh, you mean before we go to the village?

Q. Yes. A. In Macao.

The Court: You were living in Macao?

The Witness: Oh, we came from Canton to Macao first, and then from Macao to the village.

The Court: But you were living in Canton.

The Witness: Yes.

The Court: That was your home.

The Witness: Yes, because we have to move, I mean we have to move to Macao at that time, you know.

The Court: How long did you stay in Macao?

The Witness: Until victory, after the war.

The Court: How many years or months?

The Witness: How many years?

The Court: Yes.

The Witness: 1938 until 1945. [76]

The Court: Then you lived in Canton City until 1938, is that right?

The Witness: Yes.

(Testimony of She Mang Yip.)

The Court: Then in 1938 you moved to Macao.

The Witness: Yes.

The Court: And lived there until 1945.

The Witness: The first year when we arrive to Macao, we went to the village once.

The Court: Then you went to the village after you got down to Macao.

The Witness: Yes.

The Court: How long were you in Macao before you went to the village?

The Witness: About two months.

The Court: About what?

The Witness: A few months.

Q. (By Mr. Dooley): I believe you stated that your two brothers and your sister went along with you.

A. You mean to the village?

Q. To the village, Kin Mo Village.

A. Yes.

Q. How large a boat did you go on?

A. What?

Q. How large was the boat you went on?

A. Oh, it isn't too big. Just small boat, about—I [77] couldn't remember exactly, but a small boat. Might be wood, you know. I can't tell you exactly.

The Court: He was 11 or 12 years of age then. I don't know how he could remember a lot of details. He was just a youngster when he went on this trip.

Mr. Dooley: I agree with you.

Q. Were there any other children your age on the boat?

A. What do you mean?

(Testimony of She Mang Yip.)

Q. Were there any other boys your age on the boat when you went to Kin Mo Village?

A. I have my brothers, one or two years.

Q. Were there any others?

A. I couldn't remember. Maybe. You mean in the house? Yes, there must be, but I couldn't remember. I didn't count them.

Q. Did you play with any of the other boys on the boat?

A. Oh, no. Yes, sometimes I just walk around, but my mother doesn't let me go out. She want to keep us, you know, the boys here.

The Court: Mr. Dooley, you are going far afield. This boat trip was taken when this witness was 10 or 11 years of age, or 12. Now you ask him with whom he played on the boat. I think you are asking for the impossible.

Mr. Dooley: Yet, your Honor, we have the witness remembering a picture. [78]

The Court: Yes, I know, but that goes to the credibility of the witness.

Mr. Dooley: That is what I was trying to bring out, your Honor.

Q. After you got to Kin Mo Village, how many boys were there in the house that you lived in?

A. How many boys? We are three brothers and sister—oh, you mean boys, not counting the sister. Three boys and two uncles. Five together.

Q. Did you go around the village any?

A. No.

Q. You stayed in the house all the time?

(Testimony of She Mang Yip.)

A. Not exactly in the house. Sometimes in the front of the house and around there.

Q. Mr. Yip, I show you Plaintiff's Exhibit 5.

A. Yes.

Q. I ask you when was the first time you saw this picture.

A. This picture? This picture, in Hongkong before I came to America.

The Court: You saw it in Hongkong. When did you come to America then?

The Witness: What?

The Court: When did you come to America? You say you saw it before you came to America.

The Witness: Yes.

The Court: When did you come to America?

The Witness: 1949, November 20—I couldn't remember 20 what, but Thanksgiving Day is the day I arrived here.

The Court: You came to the United States in 1949?

The Witness: Yes.

The Court: And you saw that picture before you came to the United States.

The Witness: Yes.

Q. (By Mr. Dooley): Where did you see that picture for the first time? A. In Hongkong.

Q. In Hongkong. Did anyone show you the picture?

A. Oh, my father told me, because they had taken the picture in Macao, you know, so they have the picture. Then we look again and we see it,

(Testimony of She Mang Yip.)

because this is our family, you know, so he has the picture and I see it.

Q. Did your father tell you where the picture was taken?

A. In Macao. He didn't exactly tell me this one. I know he went to Macao and come back, see, and I don't remember which way. We saw the picture. I mean I saw the picture.

Q. He told you he had been to Macao?

A. At that time I was there. At that time I was there.

Q. You were in Macao?

A. No, in Hongkong, and then he went to Macao.

Q. Then when he came back from Macao, did he tell you he had taken a picture?

A. He didn't say that, but he has something, because when he come back, we have something, you know, maybe just look at something, just like that. He not say, "Oh, I want to show you some pictures or this one." I don't know exactly—how can I say it? But at this time I saw this one.

Q. He was just talking about his trip in general, is that correct?

A. He didn't talk too much, because he says, "I went to Macao to meet my brothers." That's all.

Q. Do you know where at Macao this picture was taken?

A. It is in the hotel like that. I don't know this background. I don't know. Maybe it is—I don't know what it is here. Even maybe in Los Angeles or some place sometimes you have been there, but

(Testimony of She Mang Yip.)

in the picture you cannot tell it. If I went to Macao, I could tell it, maybe. I have been in Macao and I know many places there, but I can't tell this picture.

Q. How did you learn the picture was taken in Macao?

A. Learn? What do you mean "learn"?

Q. How did you find out that the picture was taken in Macao?

A. Well, before we didn't have this picture. Then after my father come back, they have the picture, see, he has the [81] picture. I know he went to Macao to meet my uncles, so it must be in Macao. That is my guess. It must be.

Q. Did you ever discuss this picture with your father?

A. No. We just take a look, that's all.

Q. I am pointing to Plaintiff's Exhibit 5, the boy on the right of the picture. A. Yes.

Q. Who is that?

A. This one? This is my uncle. You mean the name?

Q. The name. A. Mie Jork.

Q. And this? A. Share Wong.

Q. Do you know how old they were at the time that picture was taken?

The Court: How would he know?

The Witness: You let me count and I can count it for you.

Mr. Dooley: I withdraw the question.

(Testimony of She Mang Yip.)

The Court: He doesn't know anything about that. All the information he has is pure hearsay.

The Witness: Yes.

The Court: Why waste the time.

Mr. Dooley: Thank you, your Honor.

The Court: All the information he has about these pictures is what his father told him. He has no personal knowledge [82] of these pictures at all. It is all hearsay.

Mr. Dooley: I have one or two more questions.

Q. At the time you went to Kin Mo Village in 1938, was Yip Mie Jork attending school?

A. At that time?

The Court: He was only there three or four days.

The Witness: I don't remember whether he go to school or not.

The Court: It might have been a week end or a holiday. He wouldn't know whether he was attending school or not.

Mr. Dooley: No further questions.

Mr. Kidder: I have only one question.

Redirect Examination

Q. (By Mr. Kidder): Were you present when this photograph, Plaintiff's Exhibit 5, was taken?

A. There?

Q. Yes.

A. You mean I have been there?

Q. Were you there when it was taken?

A. I was in Hongkong.

(Testimony of She Mang Yip.)

Q. You were not there?

A. No. This is Macao and I was in Hongkong.

Mr. Kidder: That's all.

(Witness excused.) [83]

The Court: Call the other witness.

PETER FONG

called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

The Court: May I ask this witness a question?

When the witness who just left the stand gave you some money to take over to China, how much was it?

The Witness: \$50, sir.

The Court: \$50?

The Witness: That's right.

The Court: All right.

Cross Examination

Q. (By Mr. Dooley): Mr. Fong, where were you at the time that you received this \$50?

A. I was in the Sincere Gift Shop.

Q. That is in the United States?

A. Yes, sir.

Q. At the time that you received this money, did Yip Share Leung tell you he intended to go to China in 1947?

A. He said he intended to, but he didn't know when.

The Court: Wait a minute. Well, that's my mistake. Go ahead. Will you read the answer?

(Testimony of Peter Fong.)

(Answer read.) [84]

Q. (By Mr. Dooley): Did you see Yip Share Leung in China during 1947? A. No, sir.

Q. You only remained in China three months, is that correct? A. Yes, sir.

Q. Did you write to Yip Share Leung while you were in China? A. No, sir.

Q. Did he write to you? A. No, sir.

Q. When was the next time you saw him?

A. About 1951 or '52. I forget the exact date.

Q. About four years later? A. Yes, sir.

Q. Had you received any letters from him during that period of time? A. No, sir.

Q. Had you written him any letters?

A. No, sir.

Q. The letter that he gave you, did it have an address on it?

A. It was addressed to Yip Mie Jork.

The Court: Any city?

The Witness: Kin Mo Village. [85]

Q. (By Mr. Dooley): How many places did you visit during your trip to China in 1947?

A. Hongkong, Macao, Kowloon, and my village, and Canton.

The Court: Did you go to Canton?

The Witness: Yes, sir.

Q. (By Mr. Dooley): Did you visit any persons in China during those trips?

A. Just my relatives.

Q. How many different houses did you go to?

A. In my village, sir?

(Testimony of Peter Fong.)

Q. No, the relatives that you visited.

A. My mother and brothers, that's all.

Q. Where were they living?

A. In On Ngai Village.

Q. That is your home village?

A. Yes, sir.

Q. Did you visit in Hongkong anyone?

A. No. I just stayed there. My brother took me there and we were just sightseeing and going some places, that's all. I forget where they are now.

Q. Did you visit in Macao?

A. No. We just stayed overnight.

Q. Did you take gifts to anyone else other than Yip Mie Jork when you went to China?

A. I didn't bring them from the United States, but when [86] I got to Hongkong, I got some gifts for my mother and sisters-in-law and brother.

Q. Is your brother married? A. Yes, sir.

Q. Does he have any children? A. Two.

Q. How old were his children in 1947?

Mr. Kidder: Your Honor, I am going to object. I believe this is immaterial.

The Court: Sustained. What difference does it make, Mr. Dooley? This witness went down to the village. He talked with the plaintiff for about 15 minutes. That's all he knows. Unless you are trying to test his credibility by asking him about his own children——

Mr. Dooley: I am going to point out the various places he had been during the trip and the improbability of his being able to remember a person he

(Testimony of Peter Fong.)

had only talked to for 15 minutes, but I will withdraw the question. No further questions.

Redirect Examination

Q. (By Mr. Kidder): Mr. Fong, you testified you left the United States in 1947. Do you remember the date, the exact date when you left the United States?

A. That was the latter part of September, but exactly, I wouldn't know. [87]

Q. The latter part of September?

A. Yes, sir.

Q. When did you return to the United States?

A. December 18th.

Q. In the same year?

A. Same year, sir.

Mr. Kidder: That's all.

(Witness excused.)

The Court: Mr. Dooley, have you any other testimony?

Mr. Dooley: Just a moment, your Honor. I would like to recall Mr. Yip Share Leung for one or two questions. Well, I will withdraw that, your Honor.

The Court: Do you have anything else, Mr. Kidder?

Mr. Kidder: No further evidence, your Honor.

The Court: Well, Mr. Kidder, I thought this from the very beginning, it takes more than you have got here to establish paternity.

Mr. Kidder: Of course, we have offered the best evidence available.

The Court: You have offered all the evidence you have, but the burden is upon you. I don't think there is any question you have done the best you can with the material you have. What have we got?

We have got the half brother of the plaintiff. When he is 22 years of age, he goes down to Macao and he says he recognizes [88] the plaintiff. I can't understand that at all. He never saw the plaintiff at all until he was 22 years of age. He talked to him, he comes from the village, he talked to him about the family and all that, but that doesn't establish paternity.

Your other witness, She Mang Yip, he says he was 11 or 12, his own testimony shows he was 10, according to the years, when he went there and when he was born, but he went there and stayed for three or four days in the village. He saw a couple of boys in the house. That doesn't establish paternity at all.

Then the last witness, Peter Fong, saw the plaintiff 15 minutes in 1947. The plaintiff was then 20 years of age.

The government has a hard time winning any of these cases, and they only win them when the plaintiff doesn't produce any evidence. If the plaintiff has any evidence, the government can't win.

Mr. Kidder: Your Honor will take cognizance that we are denied at least the plaintiff's presence, which might go a long way toward establishing our

case. We have no opportunity to have the plaintiff here.

The Court: That may be perfectly true, and I would like to see these plaintiffs come over here to testify, but the government doesn't see eye to eye with us, so we have got to do the best we can.

Mr. Kidder: At least we have the testimony from the second [89] witness that he saw the boy in the family home in 1938.

The Court: That doesn't mean anything. According to Mar Gong, I can't take cognizance of things I find out in other cases, but, you know, all the testimony we have had in these cases indicates there is a family home. All the brothers go back to that family home. They marry and bring their wives there and raise their children there in the family home. So in that home there may be two or three different families. Just because one boy appears there is no indication he belongs to a certain papa and mama.

Mr. Kidder: Of course, we have here a unique situation where the parents are dead and where, of course, the father died.

The Court: It is possible for this plaintiff to be admitted under the new procedure. He may be able to find someone who can testify, someone in the village who can go down and testify as to his living in the village all the time, living with this particular woman, called her mama, he was recognized as the son, but we haven't got anybody here who can testify they watched this boy grow up.

The first thing we know about this boy was from

the second witness. He went down to the village. He said he was 11 or 12 years of age. The plaintiff then was about two years younger.

Mr. Kidder: One year, I believe, your Honor.

The Court: There is a lapse from birth for 10 years. No [90] testimony at all of what happened. The next thing we have is in 1947.

Mr. Kidder: That's right.

The Court: There is a lapse of another 10 years or nine years.

Mr. Kidder: You have before the court, your Honor, the files of the Immigration Service, one of which is the file of the father. It shows that in 1929 when he came back shortly before his death, I believe, it contains the name of the son, the plaintiff, Yip Mie Jork.

The Court: I don't doubt there was a child born to this father and to the then mama by the name of the plaintiff. I don't doubt that. But I just don't think you have established by any competent testimony at all that the plaintiff now who is filing this complaint and demands he be recognized as the son of the alleged plaintiff, is that person. It is nothing more than conjecture.

Mr. Kidder: I would say it goes further than that.

The Court: All we have here is the testimony of witnesses who can't remember, they don't know, they think, they are not sure as to dates, they are not certain. You know, I am not questioning the credibility of the witnesses, I am not basing this upon the credibility of the witnesses, but I am bas-

ing it upon the question of whether or not, even assuming that the half brother saw the plaintiff when he was 22 years of age, and [91] I don't think that is enough, even assuming that Share Mang Hip saw the boy when he was 10 years of age or 11 years of age, I don't think that is enough. Even assuming that Peter Fong saw somebody he claimed to be the plaintiff for 15 minutes in 1947, when the boy was 20 years of age, that is not enough.

Mr. Kidder: Of course, that is the substance of our evidence. We have none better.

The Court: You cannot make a case when you don't have one, that is certain. You can't do it. You just don't have the testimony.

I will hold that you have not sustained the burden. Judgment will be for the defendant.

Court will stand in recess until 10 minutes after 11:00.

Mr. Dooley, in this case we just completed, when you prepare your findings, prepare them on the basis the plaintiff has not sustained the burden of proof. I don't want to make a finding he is not a national, because I don't know. He hasn't established he is a national.

And, Mr. Dooley, within 10 days let us have the findings. [92]

July 18, 1955, 10:00 o'clock a.m.

The Clerk: No. 6, 14967, Yip Mie Jork vs. John Foster Dulles, further proceedings.

Mr. Kidder: Ready, your Honor.

The Court: Have we an interpreter?

Mr. Kidder: Yes.

The Court: Swear the interpreter.

(Whereupon, Lily L. Chan was duly sworn to interpret the Chinese language into English and the English language into Chinese.)

Mr. Davis: Your Honor, I wonder if we might have a short voir dire examination of the Interpreter?

The Court: All right.

LILY L. CHAN

called as a witness by the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Davis): Mrs. Chan, do you know the plaintiff in this case, Yip Mie Jork?

A. No.

Q. Do you know any of the witnesses who are to appear for the plaintiff?

A. No. Are these the people? [94]

Mr. Kidder: Yes.

The Witness: No.

Q. (By Mr. Davis): Have you discussed this case with any of the witnesses who are to appear for the plaintiff? A. No.

Q. Have you interpreted before before this court? A. Yes, sir.

Mr. Davis: I have no further questions.

(Witness excused.)

The Court: I will make the customary order that

all witnesses remain out of the court room except the witness on the stand.

Mr. Kidder: I will call Mrs. Better Fong first.

LEONG LAN GIN

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: State your name, please.

The Witness: Leong Lan Gin.

The Court: Now, Mr. Kidder, I set aside the judgment, and the only thing I am interested in is what this witness knows about the plaintiff, where the plaintiff was born, who the parents are.

Mr. Kidder: That would cut down the time we would utilize, except I feel the background of the witness is essential so we [95] can show where she gained her knowledge.

The Court: Yes, I want to know that. You may proceed.

Direct Examination

Q. (By Mr. Kidder): Where do you reside?

A. You mean now? 9851½ Yale Street, Los Angeles.

Q. Do you have any business or occupation?

A. My husband works. I am not in business.

Q. Of what country are you a citizen?

A. Wife of American citizen.

Q. Are you a citizen of the United States?

A. Not naturalized yet.

Q. Are you a citizen of China? A. Yes.

Q. Where were you born?

(Testimony of Leong Lan Gin.)

A. Chung Shan, Canton, China, Kin Mo Village.

Mr. Davis: Would you spell that, please?

The Interpreter: Kin, K-i-n, Mo, M-o, Village.

Q. (By Mr. Kidder): That is two words?

A. Yes.

Q. When were you born?

A. Chinese Republic, my date is CR 19, and I think American may be 1930 birthday.

Q. What is the full date of your birth?

A. Seventh month, nineteenth day. [96]

The Court: Will you translate that?

The Interpreter: September 11, 1930.

Q. (By Mr. Kidder): What are the names of your parents?

A. Phonetically, my father was Ling Ting Chong, and my mama's name was Chew Fung Shew.

Q. Are your parents living?

A. Mother is living. Father deceased.

Q. Where does your mother live?

A. Mother is still in Kin Mo Village.

Q. How long did you live in Kin Mo Village?

A. From the time of my birth until I was about 18 years old.

Q. In whose home did you live in Kin Mo Village?
A. With my father.

Q. When did your father die?

A. Second year after the Communists came. I approximate it to be five or six years ago.

Q. Did your father live in the same house with you and your mother?
A. Yes.

Q. Did you live in any other house or residence

(Testimony of Leong Lan Gin.)

in Kin Mo Village except the house where your parents lived? A. No.

Q. Where is this house located in which you lived? Strike that. [97]

How many main gates are there to the Kin Mo Village? A. Four; north, east, south, west.

Q. Are they all of the same size?

A. I cannot tell you the exact size, whether they are exactly the same, but they are roughly gates built on each of the four sides of the village.

Q. Where is your home in Kin Mo Village with reference to the direction, that is, north, east, south or west? A. Located near the east side.

Q. Are the houses in the village laid out in rows? A. Yes.

Q. Can you tell me in which row your house was located from the east side of the village.

A. From the east counting would be the third row, the last house.

Q. The last house in the third row?

A. That's right.

Q. Do you know a person by the name of Yip Mie Jork? A. Yes.

Q. Are you related to him?

A. Not related by blood, but I know of him because we went to school together, live in the same row, went to the same school. On special occasions we exchanged visits or met with one another.

Q. Did you say that your house was in the same row of [98] houses in which Yip Mie Jork lived?

A. Yes.

(Testimony of Leong Lan Gin.)

Q. Can you state the number of his house in the third row?

A. There were six houses in the same row of that row. Ours was the last house. His was the first house.

Q. When did you first meet Yip Mie Jork?

A. When we were children at the age of about six years old, we played together in the same street or alley.

The Court: Do you remember when you were six years of age?

The Witness: Well, maybe I don't remember all the other things, activities, but we were playmates from that time on in the same street or alley.

The Court: How old was Yip Mie Jork? Was he your age?

The Witness: A few years older than I.

The Court: How few? Six, seven, eight, one, two?

The Witness: About five years or so.

The Court: Older?

The Witness: Yes.

The Court: When you were six, then he was about 11, is that right?

The Witness: Yes.

Q. (By Mr. Kidder): Did Yip Mie Jork have any other brothers and sisters? [99]

A. I don't recall him having any sisters, but there is a younger brother.

Q. What is the name of the younger brother?

A. Share Wong, Yip Share Wong.

(Testimony of Leong Lan Gin.)

The Court: How much younger was he than Yip Mie Jork?

The Witness: I think about two or three years.

The Court: Did you play with his younger brother, too?

The Witness: Yes.

Q. (By Mr. Kidder): Was Yip Share Wong older or younger than you were?

A. I surmise one or two years older.

Q. Than you are? A. Than I was.

Q. Were you ever in the house of Yip Mie Jork? A. Yes.

Q. On what occasions or under what circumstances?

A. During New Year's Time, during birthdays, and during festivities in the village. In our village we have a custom of bringing things to our neighbors on festive days or occasions.

Q. Was Yip Mie Jork ever in your home?

A. Yes.

Q. On the occasions when you visited in the home of Yip Mie Jork, did you go alone?

A. I usually go with my younger sister.

Q. Did you ever go with anyone else? [100]

A. On a special occasion when we are invited to their home for dinner, our whole family would go, also, that is in visiting the house.

Q. Did Yip Mie Jork come to your home more than once?

A. Often, whenever there is special occasion, we

(Testimony of Leong Lan Gin.)

invite them to come over to our home for dinner, and on special occasions.

Q. Did you attend school in Kin Mo Village?

A. Yes, I started around 10 years old.

Q. What is the name of the school?

A. The name is Nom Fung School.

Q. Did Yip Mie Jork attend school?

A. Yes, in the same Nom Fung School.

Q. Was he in the same grade?

A. He is in a higher grade. He was in a higher grade.

Q. Did Yip Share Wong attend school?

A. Yes. He was about one grade higher than me.

Q. Did you ever see Yip Mie Jork in school?

A. After classes, yes, we saw each other, and also at the ball field or recreation field.

Q. Would that be at the school grounds?

A. At the school entrance.

Q. During this period when you state that you were playing on the streets with Yip Mie Jork, how often would you see him? [101]

A. You know, boys play more than girls in the village, and maybe he has gone out more often than we do, but whenever I go out, we see each other, but the boys play outside more than the girls.

Q. About how often would that be you would see him?

A. Whenever we are not in school, like Sunday, we would play outside the street there, but on school days we would see each other in the recreation field.

(Testimony of Leong Lan Gin.)

The Court: How many brothers did Yip Mie Jork have?

The Witness: According to what I hear——

The Court: Not what you hear. How many did you see? How many did you know of?

The Witness: When I was in China, Share Wong, Yip Mie Jork, was the ones I saw.

The Court: How many did you play with in China?

The Witness: I play with more than just the two Yip boys.

The Court: How many brothers did you play with, these brothers?

The Witness: And with the mother, too.

The Court: How many? Did you play with all these boys or just two of them?

The Witness: Those are the two.

The Court: Just two?

The Witness: Yes.

The Court: You were in the home, weren't you?

The Witness: There is the mother, too.

The Court: You went into Yip Mie Jork's home, didn't you?

The Witness: Yes.

The Court: Who was living in that home?

The Witness: As far as I know, there are two brothers and the mother.

The Court: Then the other brothers weren't living in the home, is that right?

The Witness: No.

(Testimony of Leong Lan Gin.)

The Court: Who were the brothers living in the home, what were their names?

The Witness: Mie Jork, Yip Share Wong.

The Court: Mie Jork and Yip Share Wong. Were the other two brothers younger or older?

The Witness: The older one is in the United States. The other one, it was rumored that he went to service, some kind of service. I don't know him.

The Court: How old were you when you left the village?

The Witness: 18.

The Court: When you left the village, where was Yip Mie Jork?

The Witness: They were in the village.

The Court: Where was Share Wong?

The Witness: With the older brother in the village.

The Court: All right. You can proceed. [103]

Q. (By Mr. Kidder): What is the name of the brother that you stated you met in the United States? A. Yip Share Leung.

The Court: Where is that brother now?

The Witness: He lives in Hollywood. He is inside there.

Mr. Kidder: He gave testimony, your Honor, in the original trial and is present in the witness room now.

Q. (By Mr. Kidder): Do you know the names of the parents of Yip Mie Jork?

Mr. Davis: I object to the question, your Honor. I believe that is calling for hearsay.

(Testimony of Leong Lan Gin.)

The Court: I think so. This witness wouldn't know. You know, if this was a trial here in the United States and we had a youngster six years of age come in and testify, I wouldn't let her testify until she was qualified, and yet we let these Chinese people testify. I don't think they remember.

Mr. Kidder: She testified only she remembered him first when she was about six years of age, but she does state she lived in the village until 1948. That would make her 18. She was playing with him and going to school with him.

The Court: Now, you go ahead and let's see what she knows.

Q. (By Mr. Kidder): Do you know the name of the mother of Yip Mie Jork?

Mr. Davis: I object to the question, also, as calling for hearsay. [104]

The Court: Objection sustained.

Mr. Kidder: May I be heard on that? I think it might be admitted on perhaps two bases. One, pedigree, possibly, or family history.

The Court: She can testify with whom the boy lived. You don't have any testimony as to the birth at all. All you are going to have to rely upon is reputation.

Mr. Kidder: That's right. That would be the second basis, perhaps, neighborhood reputation.

The Court: That's all this girl knows. You ask her who the mother is and she can't testify. She can testify whom the boy lived with.

(Testimony of Leong Lan Gin.)

Mr. Kidder: I believe she can testify, also, to any conversations she may have had.

The Court: You didn't ask her that.

Q. (By Mr. Kidder): You testified you have been in the home of Yip Mie Jork, is that correct?

A. Yes.

Q. Who lived in the home with Yip Mie Jork?

A. With his mother.

Mr. Davis: I object to that and move the answer be stricken.

The Court: It may go out. What was the name of the woman who was in the home?

The Witness: Wong She. [105]

Q. (By Mr. Kidder): Did you have any conversation with Wong She regarding the family history of the Yip family?

A. I never ask very many questions, but all I know the two boys call this Wong She mama.

Mr. Davis: I object to that as being unresponsive to the question asked. I wonder if we might ask the witness, through the interpreter, to try to contain her answers to the questions.

The Court: If you have a motion to strike, it is denied. It is up to the court to evaluate the testimony of this witness.

Q. (By Mr. Kidder): Were you ever present when there was any discussion concerning the family history of Yip Mie Jork?

A. In the village a young lady doesn't go into the family affairs of another family, but in the midst of my visiting with these people, I only feel

(Testimony of Leong Lan Gin.)

that these two boys were the sons of this lady, Mrs. Wong, but usually our conversation dwelt on school accomplishments, you know, about school, what do we do in school, and so on and so forth.

The Court: May I ask the witness a question? Do you know the difference between a full brother and a half brother?

The Witness: As far as I know, they both call this woman mama.

The Court: Do you know what a half brother is?

The Witness: I don't notice it.

The Court: You don't know what a half brother means? [106]

The Witness: I understand what you mean, but I don't feel they are half brothers.

The Court: Do you know what a half brother is?

The Witness: Yes, I understand.

The Court: What is a half brother?

The Witness: Sometimes with one parent the same, the other one is not the same.

The Court: How many children were in this home?

The Witness: The two brothers and mother.

The Court: You never saw any children in the home except these two brothers?

The Witness: No.

The Court: All you know is the two brothers called the woman mama, is that right?

The Witness: Mama, yes.

Q. (By Mr. Kidder): Do you know the reputation in the community or the neighborhood as to

(Testimony of Leong Lan Gin.)

the relationship between this lady and the two boys?

A. Everybody knows they belong to her, they eat together, they live together.

Mr. Davis: Your Honor, I don't mean to slow down the progress of the trial, but I think I will move to strike the answer. The witness——

The Court: It may go out.

Mr. Davis: Thank you. [107]

The Court: That may be marked Plaintiff's Exhibit 6 for identification.

(The exhibit referred to was marked Plaintiff's Exhibit No. 6 for identification.)

Q. (By Mr. Kidder): I now show you a photograph marked Plaintiff's Exhibit 6 for identification and ask you if you can name the person depicted in that photograph.

A. This is Wong She.

Q. Is this the lady you have been talking about by the name of Wong She? A. Yes.

Q. I now show you Plaintiff's Exhibit 5 in evidence, being a photograph, and ask you if you can name the persons depicted in that photograph.

A. The center is Share Leung, the right, facing the picture, is Mie Jork, the left side, Yip Share Wong.

Q. I now show you a group of photographs attached to Plaintiff's Exhibit 1 in evidence and ask you if you can identify the person in the photograph on the upper left-hand corner.

A. Yip Share Wong, Share Leung, the middle one, Yip Mie Jork on the right.

(Testimony of Leong Lan Gin.)

Q. I show you a photograph in the upper right-hand corner of this group and ask you if you can identify the two persons there. [108]

A. Yip Share Leung on the right, Yip Mie Jork on the left.

Q. I show you a photograph in the lower left-hand corner of this group, and can you identify this person?

A. Yip Dock, the father.

Q. Have you ever seen this photograph before?

A. There was a large picture in their home, a larger one, that looks like him.

Q. In whose home?

A. Yip Mie Jork's home.

Q. I now show you a photograph on the lower right-hand corner of this group. Who is this person, if you know?

A. Yip Share Wong.

Mr. Kidder: Your Honor, when we had the prior trial, there was used a map of the National Geographic Society. Since that time I have been able to obtain a more detailed map of this vicinity. It is a Chinese map. With the court's permission, I would like to ask the interpreter to designate a few principal places here so that the general locality could be seen.

The Court: Let me see it. I can read Chinese. There are so many characters on this map, you can't see the map for the characters.

Mr. Kidder: I brought a magnifying glass for that purpose.

The Court: You can't change the testimony of

(Testimony of Leong Lan Gin.)

the witnesses [109] we already have had as to the location of the village.

Mr. Kidder: No, but I believe by locating the village on the map there, I can show it is consistent with all prior testimony.

The Court: I don't know how you can. The witnesses were in different directions. They located the village in absolutely opposite directions.

Mr. Kidder: I think if we pinpoint the village here as to where it is, it will be clear.

The Court: All right. Let the interpreter mark Hong Kong there. I think I know where Hong Kong is.

Mr. Davis: I wonder if we might examine the map for a moment.

The Court: Yes, you can examine the map.

Mr. Kidder: I would invite comparison with the National Geographic map as to the general contour of the vicinity.

The Court: Let the interpreter mark Hong Kong, Macao, Canton.

Mr. Kidder: Draw a line and number it so that people who examine the map later might have the benefit.

The Court: I don't think there is any confusion as to where Hong Kong is or Macao or Canton. I can mark them on the map from the general appearance. Just put a circle around Canton.

Mr. Davis: Your Honor, might we take a recess and I can [110] contact Mr. Dooley and he can come in and handle the trial from here. It appears

(Testimony of Leong Lan Gin.)

there is some conflict in the testimony as to the location of the village and I am not familiar with that.

The Court: I am familiar with that. You don't need Mr. Dooley here. They are not trying to convince Mr. Dooley. They are trying to convince me.

Mr. Kidder: Could I suggest the general location?

The Court: Is that a different dialect on the map?

The Interpreter: No. The words are so blurred I can't spot the label. I know the approximate location is here. Macao is above Hong Kong and Hong Kong is almost opposite Canton.

The Court: Macao is across the bay from Hong Kong and Canton is up the bay.

You know, if this witness has that much trouble locating Hong Kong and Macao, I don't know how she is going to locate a village on the map.

Mr. Kidder: If they get in the general vicinity, I am sure they can.

The Court: Is the village named on the map?

Mr. Kidder: Yes. That is what I am told.

The Witness: This is Macao.

Mr. Kidder: Now, can she find the village, Kin Mo Village?

The Court: Did she locate Canton? [111]

I know more about that bay than I do San Francisco.

The Interpreter: You want the city of Canton?

The Court: Yes. Go up to the head of the estu-

(Testimony of Leong Lan Gin.)

ary. You will find it. Maybe the witness can't read the Chinese.

The Interpreter: It is because it is so small, so many words on top of each other.

She says, do you have a larger map?

Mr. Kidder: That is the only one we have.

Would it be all right for the interpreter to designate where these cities are?

The Court: I told you I knew where Hong Kong, Macao and Canton are on that map.

Mr. Kidder: I do, too.

The Court: I can't read the Chinese names, but I know from that map where the cities ought to be located. Let's ask this witness a question and just forget the map a minute.

When you lived in the village, how far did you live from Macao?

The Witness: From the village we walked to a village called Dow Mon and from there we took a boat to Macao.

The Court: How long did it take you to go?

The Witness: About 10 hours.

The Court: Do you know the direction you went?

The Witness: From the village we go north to take the boat and after that I don't know which direction the boat takes us. [112]

The Court: How long does it take you to go from the village to Canton?

The Witness: From the village we go to Macao and then we go to Canton.

(Testimony of Leong Lan Gin.)

The Court: You have to go to Macao before you go to Canton?

The Witness: Yes.

The Court: Is the village located on the sea coast?

The Witness: Not too near, because we have to walk to the wharf and take the little boat.

The Court: Is the wharf on the ocean?

The Witness: The pier is a very small one where only small boats are launched there, and from there you go to Macao and then you transfer to a larger boat.

The Court: You know what the ocean is, don't you?

The Witness: You mean the Pacific Ocean?

The Court: Or the China Sea. I don't care what you call it.

The Witness: When you don't get up to senior high school, they don't teach you too much about geography in my village.

The Court: How can she locate this village? She has no idea.

Q. (By Mr. Kidder): If you take a boat from Macao to the village, do you get off the boat at any time before—strike that. [113]

If you take a boat from Macao to the place you named Dow Mon, do you get off the boat at any time between Macao and Dow Mon?

A. You take a small boat from Macao to Dow Mon and then you get off the boat and you walk about an hour.

(Testimony of Leong Lan Gin.)

Q. Then where do you arrive after you have walked an hour? A. Back to Kin Mo.

Q. Then the boat takes you to within an hour's walk of Kin Mo, is that right?

A. From Macao you ride the boat about 10 hours to Dow Mon, and at Dow Mon you get off the boat and you walk about an hour back to the village.

Q. Do you know whether the boat sails entirely on an ocean or on a river or in a bay? Do you know where the boat sails?

A. Where Macao is is where the big bay is, but when you get into the estuary, the village, it is small rivers.

The Court: Mr. Kidder, I think we are wasting time trying to get this location.

Mr. Kidder: With this witness, perhaps.

The Court: I am going to have to take an early recess. I am going to recess until 1 o'clock. That will give Mr. Dooley time to get here. I will give you two hours this afternoon. [114] You have had an hour this morning, so that will give you two hours this afternoon in addition.

Mr. Kidder: Your Honor, I believe this map is very vital for this reason. It does show the estuary and I am told it does show the village on here. Would there be any objection to the interpreter locating the principal cities?

The Court: I have no objection.

Mr. Kidder: This is only a matter of geography as to where these places may be.

The Court: You can let the interpreter look at

the map during recess and maybe the interpreter can locate these places on the map. I don't know. I can locate Hong Kong, Macao and Canton on that map without any trouble.

Mr. Kidder: I believe I can, too.

The Court: But I don't know where the village is.

Mr. Kidder: Two places mentioned, Dow Mon, and also Kin Mo Village, are marked on the map. It is only a question of locating them.

The Court: We will take a recess until 1:00 o'clock. You can tell Mr. Dooley what has happened. He can get here at 1:00 o'clock. I want you to plan to finish up with these witnesses by 3:00. I don't want any witness to testify who has already testified. I am not opening this case for the purpose of taking additional testimony from these other witnesses, but just the new witnesses is all I want. [115]

Mr. Kidder: I do not intend to recall anybody.

The Court: Court will stand in recess until 1:00 o'clock.

(A recess was taken to 1:00 o'clock, p.m.)

July 18, 1955; 1:00 o'clock, p.m.

LEONG LAN GIN

a witness called on behalf of the plaintiff, having been first previously sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Kidder): Mrs. Fong, I now have

(Testimony of Leong Lan Gin.)

an enlargement of the section of the Chinese map that was shown to you this morning. Will you now look at this enlargement? I would call your attention to this place marked 2, that is the city of Macao, as the interpreter has so designated on the map, and this portion up here designated as 3 is Canton City.

Are you able to state where your village is, Kin Mo Village is located? A. Kin Mo.

The Court: How do you know that is Kin Mo? Can you read it on the map?

The Witness: Yes. I read it here.

The Court: That is the way you know it, because you read it?

The Witness: In relation to Macao I am not able to go and tell you the direction north, south, east or west, but I can go by association. [117]

The Court: All right.

Q. (By Mr. Kidder): Do these letters mean anything here? Can you read these letters?

A. Kin Mo.

Q. Is that what they say? A. Yes.

Q. Pointing to the letters immediately above these Chinese characters, what do they say?

A. That is Mon.

Q. Is that a city?

A. That is one word missing. It is Dow Mon, see. It should be Dow Mon here.

Q. Were you ever in Dow Mon?

A. When I took the boat and went into the pier.

Q. Does the boat land at Dow Mon?

(Testimony of Leong Lan Gin.)

A. Not Dow Mon. There is a wharf where the boats tie in.

Q. How do you get from Dow Mon to Kin Mo Village?
A. By walking.

The Court: Let me see the map.

Mr. Kidder: May the interpreter encircle Dow Mon there and mark it with a number?

Q. Do you know how to travel by boat between Macao and Dow Mon?

A. By boat we pass a big ocean, a big body of water, [118] and also some river water and places where people have fishing, you see people doing fishing.

Q. Do you know the route the boat takes?

The Court: She wouldn't know. She didn't have any idea of directions.

Mr. Kidder: I just want to ask her yes or no. What was the answer?

The Witness: The direction, no.

Mr. Kidder: I have nothing further of this witness.

The Court: You can call the next witness.

(Witness withdrawn.)

Mr. Kidder: Russell Chan. His English isn't the best, but I believe he has enough command so we can proceed.

RUSSELL CHAN

a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Will you please state your name?

The Witness: Russell Chan.

(Testimony of Russell Chan.)

Direct Examination

Q. (By Mr. Kidder): Russell, will you please be certain to speak loudly so the court and counsel and myself can hear you? A. Yes.

Q. Where do you live? [119]

A. 2181 Cooley Avenue, Palo Alto.

Q. What is your business or occupation?

A. Farmer.

Q. Of what country are you a citizen?

A. United States.

Q. How did you become a citizen of the United States? A. I was born in San Diego.

Q. What state? A. California.

Q. What is the date of your birth?

A. May 8, 1924.

Q. That is the American date? A. Yes.

Q. What are the names of your parents?

A. My father's name is Chan Lock.

Q. What is the name of your mother?

A. Wong Shee.

Q. Are your parents living?

A. My father passed two years ago and my mother is still living.

Q. Where does your mother live?

A. In China, in Kwang Tun.

Q. Where in China?

A. Chung Shan District, New Nam Shan.

Q. That is New Nam Shan? [120]

A. Yes.

Q. Is there an old Nam Shan?

A. Yes. That is the new village. It is smaller.

(Testimony of Russell Chan.)

Q. Are they located near each other?

A. Yes.

Q. Do these adjoin each other?

A. Oh, about three-quarters miles apart.

Q. Have you ever made any trips to China?

A. Yes.

Q. How many have you made? A. Two.

Q. When did you make your first trip?

A. 1927, the first trip.

Q. Where did you go on that trip?

A. Go to New Nam Shan Village.

Q. Were you accompanied by anyone on that trip?

A. Yes, by my mother and my two brothers and my sister.

Q. When did you return to the United States?

A. In 1938.

Q. Where did you live between 1927 and 1938?

A. In Nam Shan.

Q. Is that New Nam Shan? A. Yes.

Q. With whom did you live?

A. With my mother and my brothers and sister.

Q. When did you make your second trip to China? A. 1947.

Q. Where did you go on that trip?

A. To New Nam Shan Village, to my mother's place.

Q. And when did you return to the United States? A. In 1950.

Q. Where did you live in China between 1947 and 1950? A. In New Nam Shan Village.

(Testimony of Russell Chan.)

Q. Did you ever hear of Kin Mo Village?

A. Yes.

Q. Where is that located with reference to New Nam Shan Village?

A. That is east of Nam Shan about one hour's walking.

Q. That is Kin Mo is east? A. Yes.

Q. Of Nam Shan? A. Yes.

Q. One hour walking. About how far would that be in distance, if you can estimate it?

The Court: You can walk about four miles an hour. I don't know whether they walk fast or slow.

The Witness: Two and a half American miles. Of course, it is pretty hot to walk, not like here.

Q. (By Mr. Kidder): How did you get between your village and Kin Mo Village? [122]

A. By walking.

Q. Was there any other means of transportation? A. Well, they got bicycles.

Q. Do you know a person by the name of Yip Mie Jork? A. Yes.

Q. Is he related to you?

A. No. Just friend.

Q. Have you ever seen Yip Mie Jork?

A. Yes.

Q. When is your earliest recollection, that is, approximately what age were you when you have the earliest recollection of meeting Yip Mie Jork?

A. Oh, about seven or eight years old. My mother take us to visit his house earlier, but I don't remember. I am too small then.

(Testimony of Russell Chan.)

Q. Do you have any recollection of seeing him when you were seven or eight years old?

A. Yes.

Q. Where did you see him?

A. At his house. Sometimes his mother bring him and his brother to my house.

Q. Where did you see him, at your house or at his house? A. You mean the first time?

Q. The first time you have any recollection of seeing [123] him, yes. A. At his house.

Q. At his house? A. Yes.

Q. Where was his house?

A. At Kin Mo Village.

The Court: How old were you when you first saw him?

The Witness: About seven or eight years old.

The Court: How old was he?

The Witness: Oh, probably four or five, about four years old.

The Court: Then you were four years older than——

The Witness: Than Yip Mie Jork.

The Court: Than Yip Mie Jork?

The Witness: Yes.

The Court: Four years older?

The Witness: Yes.

Q. (By Mr. Kidder): Did you see him more than once? A. Yes, more than once.

Q. That is during the first time you lived in China between 1927 and 1938, did you see him more than once?

(Testimony of Russell Chan.)

A. Yes. I saw him three or four times every year until I come back in 1938. The last time I saw him between 1938—I mean the first time I went back was 1927, the last time I saw him. [124]

Q. You said you were in China between 1927 and 1938? A. Yes.

Q. Just confining yourself to that period, about how often did you see him?

A. Oh, about three times, four times every year.

Q. What were the occasions or what were the circumstances of these meetings? What was the reason for them?

A. Oh, just like New Year's, or something like that, and then we go visiting each other.

The Court: Let me go back and try to find out something. When did you go back to your village in 1927, what month was it?

The Witness: In 1927?

The Court: Yes.

The Witness: I don't know. I was too small.

The Court: How old were you then?

The Witness: Three years old.

The Court: Then you lived in the New Nam Shan Village from 1927 to 1938, that is eleven years?

The Witness: Almost eleven years.

The Court: You were about seven or eight years old when you first remember seeing Yip Mie Jork?

The Witness: Yes.

The Court: And Yip Mie Jork at that time was three or four years old? [125]

(Testimony of Russell Chan.)

The Witness: Yes.

The Court: When were you born?

The Witness: 1924.

The Court: What month?

The Witness: May 8th.

The Court: 1924?

The Witness: Yes.

Q. (By Mr. Kidder): Do you have any documentary evidence of your birth with you today, Russell? A. Yes.

The Court: This boy you saw when you were seven or eight years old, you say was Yip Mie Jork. How do you know that?

The Witness: Because I went to his house and his mother told me.

The Court: His mother told you this was Yip Mie Jork?

The Witness: Yes, and then I play with him.

The Court: You played with him?

The Witness: Yes.

Mr. Kidder: I have evidence of the birth. Mr. Dooley, will you stipulate this witness presented a certificate of birth in a certain name? I don't wish to offer it because it belongs to him and he should keep it.

The Court: That is all right. There has been no question raised whether or not this witness is telling the [126] truth when he says he was born May 8, 1924. I will take his statement as to when he was born.

Q. (By Mr. Kidder): Mr. Chan, where was the

(Testimony of Russell Chan.)

Yip home located in this Kin Mo Village, if you know?

A. East side of the village, third row from the gate, the first house near the street.

The Court: How big was this Kin Mo Village?

The Witness: I don't know exactly, but about 600 houses.

The Court: 600 houses?

The Witness: Yes.

Q. (By Mr. Kidder): How many main gates were there to this village, if you know?

A. Two big ones and two little small ones.

The Court: Was there a wall around this village?

The Witness: No.

The Court: What do you mean by gate?

The Witness: You just have a gate and everybody go in and come out this gate.

The Court: No wall?

The Witness: No wall.

Q. (By Mr. Kidder): Is this gate just an archway? A. Yes.

Q. You understand what I mean by an arch?

A. Yes. They build something with brick and everybody [127] go in and come out from the gate.

Q. With reference to the Yip home, you say it was located near the east gate, is that right?

A. Yes.

Q. When you walked from your own village to the Kin Mo Village, which gate would you enter into the Kin Mo Village?

(Testimony of Russell Chan.)

A. The west side, the west gate.

Q. That would be the west gate? A. Yes.

Q. How would you get from there to the Yip home?

A. I go in the west gate and then I walk over the street and then to the east to his home.

Q. Between this period of 1927 and 1938, who lived in the Yip home in Kin Mo Village, who lived there? A. His mother and two brothers.

Q. Do you know the name of the mother?

A. The name of the mother, Wong She.

Q. How many brothers besides Yip Mie Jork lived there? A. Two.

Q. What were their names?

A. The big one is Yip Jeang Shing and the smaller one is Share Wong.

The Court: Let's go back. Whose home is this?

Mr. Kidder: The Yip home. There was a mention made of this Jeang Shing by a prior witness, too. [128]

The Court: We had two children. How many children did you see in this home? Were they boys or girls?

The Witness: Boys.

The Court: How many boys were there?

The Witness: Altogether? Including Yip Mie Jork?

The Court: How many boys were there, including yourself?

Mr. Kidder: No. He is not a member.

(Testimony of Russell Chan.)

The Court: How many boys were there, including Yip Mie Jork?

The Witness: Three.

The Court: What were their names?

The Witness: Jeang Shing and Yip Mie Jork and Share Wong.

The Court: What was the first one?

The Witness: Jeang Shing.

The Court: How old was he?

The Witness: He is much older than I am.

The Court: How much?

The Witness: Maybe ten or eleven.

The Court: Ten or eleven years older than you?

The Witness: Yes.

The Court: How old were you then?

The Witness: When?

The Court: When you went over and saw these three boys in the house, how old were you?

The Witness: You mean the first time I remember? [129]

The Court: Yes.

The Witness: About seven or eight years old.

The Court: How old was Jeang Shing?

The Witness: Jeang Shing must be 19 or 18 or 20. He is much bigger than I am.

The Court: What is the other boy's name?

The Witness: Yip Mie Jork.

The Court: How old was he?

The Witness: He is three years younger than I am.

(Testimony of Russell Chan.)

The Court: How old was he when you went over there?

The Witness: Oh, four.

The Court: Who is the other boy?

The Witness: Share Wong.

The Court: How old was he?

The Witness: Three.

Q. (By Mr. Kidder): Are there any other brothers in this family or half brothers that you have not named? You have named three people thus far. Is there anyone else?

The Witness: In the house?

Q. No, not in the house, but in the family.

Mr. Dooley: I object, your Honor, on the ground he hasn't shown he knows everybody in the family.

Mr. Kidder: He mentioned three brothers.

The Court: Overruled.

Q. (By Mr. Kidder): Is there any other brother or half brother? [130]

A. Yes. They got Yip Mie Jork and Share Wong, who have the same mother, and they got two brothers, Jeang Shing and Share Leung, and the mother pass away, but not the same mother.

The Court: How do you know?

The Witness: Because my father is a friend of Yip Dock and Yip Share Leung know my father. The first time we went home to China we took the same boat with Share Leung in 1927 when we go home to China, go back to China.

Q. (By Mr. Kidder): Getting back to the period of 1927 to 1938, when you were there, which

(Testimony of Russell Chan.)

boys of the Yip family were living in this house at the time you first remember being there, your first recollection, which boys lived there then?

A. Jeang Shing and Yip Mie Jork, Share Wong.

Q. At the time you left about 1938, which boys, if any, were living there in the Yip house at that time?

A. At that time Yip Mie Jork and Share Wong.

Q. Where was Jeang Shing, if you know?

A. I don't know.

Q. Did Yip Mie Jork ever visit in your home?

A. Yes.

Q. That is in Nam Shan Village?

A. Yes.

Q. At the time he visited at your home, was he accompanied by anyone?

A. By his mother and his brother. [131]

Q. Did you ever stay overnight at any time in the Yip home?

A. Yes, in 1949, before I come back here.

Q. That would be on your second trip?

A. Yes.

Q. You testified that you went to China a second time in 1947 and remained there until 1950. Did you see Yip Mie Jork at any time during the course of that trip? A. Yes.

Q. Did you see him more than once?

A. Yes.

Q. About how many times did you see him?

A. Oh, about three or four times every year.

(Testimony of Russell Chan.)

Q. What were the occasions among which you saw him then?

A. Just a friendly visit.

Q. Who lived in the Yip home at that time?

A. Yip Mie Jork and his brother.

Q. Was there a lady living in the home at that time?

A. No.

Q. Did you ever see Yip Dock?

A. Well, I saw him once when I was a little boy, but I don't remember him. I only saw his picture hang on the wall.

Q. Where was the picture?

A. On the wall. [132]

Q. What wall?

A. The living room wall.

Q. In whose home?

A. In Yip Mie Jork's home.

Q. I now show you a group of photographs attached or made a part of Plaintiff's 1 in evidence, and I ask you if you can identify the person depicted in the photograph in the upper left-hand corner beginning on the left?

A. Share Wong.

Q. Who is the person in the middle?

A. Share Leung.

Q. Who is the person on the right?

A. Mie Jork.

Q. I show you the picture in the upper right-hand corner of the same group of photographs and ask you to identify the persons therein, beginning with the individual on the left.

(Testimony of Russell Chan.)

A. Mie Jork.

Q. And the individual on the right?

A. Share Leung.

Q. I now show you a photograph contained in this group which is in the lower left-hand corner and ask you if you can identify that person.

A. Yip Dock.

Q. Did you ever see this picture or a similar one at that time? [133]

A. Yes. I saw the bigger one.

Q. Where did you see this picture?

A. In Mie Jork's house.

Q. Is this the picture you refer to as being on the wall of the house?

A. Yes, but not this size, a big size.

Q. About how large?

A. Oh, about this size.

Mr. Kidder: Can we take his measurement at about 10 square inches, more or less?

The Witness: About 10-15.

Q. (By Mr. Kidder): I now show you a photograph in this group at the lower right-hand corner. Can you identify that person?

A. It is Share Leung.

Q. Did you ever see any of these particular photographs before today? Did you ever see any of these photographs before?

A. Exactly the same, this size?

Q. These particular photographs, have you ever seen them before? A. No.

Q. I now show you a photograph marked Plaintiff's Exhibit 5 in evidence, and ask you if you can

(Testimony of Russell Chan.)

Identify the persons therein beginning with the individual on the left?

A. Share Leung and Share Wong and Yip Mie Jork. [134]

Q. I now show you a photograph which is marked Plaintiff's Exhibit 6 for identification and ask you if you can identify the person in that photograph?

A. Wong She, Yip Mie Jork's mother.

Q. When you made your trip to China in 1947, what was the first port you arrived at when you arrived in the Orient?

A. Hong Kong.

Q. How did you travel from Hong Kong to your village?

A. From Hong Kong to Macao and from Macao to Dow Moon.

Q. Would you spell that, please?

A. D-o-w, M-o-o-n, and then I went to the village.

Q. How did you travel between Macao and Dow Moon?

A. By boat.

Q. Approximately how long?

A. Five hours, sometimes it is four and a half, sometimes five.

Q. What does it depend upon, if you know?

A. The wind and the tide.

Q. Some days you can travel faster than others. After you reach Macao, is it necessary to change boats?

A. Yes, change to smaller boat from Macao to Dow Moon.

(Testimony of Russell Chan.)

Q. How long does it take to travel from Macao to Dow Moon? A. How long?

Q. Yes. [135]

A. Oh, about nine or ten hours, sometimes eight hours, depending on the wind and the tide. Sometimes they get low tide and high wind and it is pretty slow, maybe take more than ten hours.

Q. It depends again upon the wind and the tide?

A. Yes.

Q. Where is Dow Moon located, in what district? A. Chung Shan.

Q. In what district is your village located?

A. Same district.

Q. How far is it approximately from Dow Moon to New Nam Shan Village?

A. Oh, about an hour, take about an hour and twenty minutes to walk.

Q. I show you a map in Chinese characters and ask you if you can locate thereon the Chung Shan District?

Mr. Dooley: Your Honor, I object to this on the first ground that the various districts are already marked on there with red pencil.

The Court: That is right, they are all marked. However, I suppose we ought to be able to look at the map. Objection overruled.

Q. (By Mr. Kidder): Can you find on this map the city of Hong Kong? You may use the magnifying glass, if you like.

A. Here is Hong Kong. [136]

(Testimony of Russell Chan.)

Mr. Kidder: Mr. Dooley, will you really acknowledge he has pointed to the same place?

Mr. Dooley: I will acknowledge a red line goes through Hong Kong and, I believe, also, the Chinese characters read Hong Kong. Is that correct?

Q. (By Mr. Kidder): Does this Chinese character here read Hong Kong? A. Yes.

Q. Can you find Macao on this map?

A. Yes, right here.

Q. Does the Chinese character say Macao?

A. Yes.

Q. Are you able to read it? A. Yes.

Q. Will you point out where the Chung Shan District is, wherever your brothers may be?

A. Chung Shan District is this all, but Dow Moon is here and then I live here. Nam Shan is here.

Q. You live on the east coast. Is this an island here? A. Yes.

Q. You live on the east coast? A. Yes.

Q. Of this island? A. Yes.

Q. Will you place a mark where your village is?

A. Yes (witness complying).

Q. What does this say here?

A. Dow Moon here.

Q. This is Dow Moon? A. Yes.

Q. This is the place where you get off the boat?

A. Get off the boat here.

Q. On this little tributary, I suppose it would be.

A. And then I walk 20 minutes to Dow Moon

(Testimony of Russell Chan.)

and from Dow Moon I take a little trip inside, near Dow Moon, but not too close.

Q. Is Dow Moon right on the map, the city itself, is it right on the map?

A. No. Oh, about 20 minutes, 15 minutes walk to the creek, and then the boat go in the creek here and then I walk to Dow Moon.

Q. Where you get off the boat, you still have to walk a ways to get to Dow Moon?

A. Yes.

Q. Then you walk further on to the village?

A. Yes.

Q. There is another Chinese character appears on this island here. Can you state what this is?

A. Kin Mo.

Q. Is it the Kin Mo Village you have been discussing [138] in your testimony today?

A. Yes.

The Court: You say that is on an island, Kin Mo?

The Witness: There is water all around it.

The Court: How big is this island? How big is this island?

The Witness: I never go all over the island. It is pretty hard to walk all over it. They got trees and everything.

The Court: How do you know it is an island then?

The Witness: Because I go by boat right here to here, and then all on this side they got all water. I go fishing here. I go fishing right here.

Q. (By Mr. Kidder): Can you take this pen

(Testimony of Russell Chan.)

and draw an approximate course that the boat would take from Macao to Dow Moon?

A. Macao here.

Q. That is Macao there?

A. Yes. They go this way and then go this way in here, in here to the creek, and then to Dow Moon.

Mr. Kidder: Now, could we use the other map a moment?

Q. This is an enlarged section of the Chinese map I have just shown to you. Can you pick out the Kin Mo Village and Dow Moon on this map?

A. Yes.

Mr. Dooley: Your Honor, I make the same objection. The [139] various places are encircled in red on the map.

The Court: The same ruling.

Q. (By Mr. Kidder): What is this where the red circle appears on the right, what is this place?

A. Macao.

Q. Can you trace on this map in ink the approximate course of the vessel as it travels between Macao and Dow Moon?

A. From Macao you go here.

Q. Will you place a mark on this map as to the approximate location of your village with reference to Kin Mo and Dow Moon?

(Witness complying.)

Q. When you get off the boat and proceed to Dow Moon, is it necessary to go through Kin Mo first before you reach your village?

(Testimony of Russell Chan.)

A. No.

Q. You can go directly from Dow Moon to your village, is that right? A. Yes.

The Court: When you *first* Yip Mie Jork how old did you say Yip Mie Jork was?

The Witness: Four years old.

The Court: You were seven years old?

The Witness: Yes.

The Court: All right.

Mr. Dooley: No further questions.

The Court: You may step down.

(Witness withdrawn.)

FAY JEAN CHEW

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Will you please state your name?

The Witness: Fay Jean Chew.

Direct Examination

Q. (By Mr. Kidder): Will you state your name, please? A. Fay Jean Chew.

Q. Where do you reside?

A. I live in Oakland.

Q. And what address?

A. 4735 Congress Street, Oakland.

Q. Are you married? A. Yes.

Q. Do you have any business or occupation?

A. Grocery store.

Q. What is your citizenship?

(Testimony of Fay Jean Chew.)

A. Wife of a citizen.

Q. Where were you born? A. China.

Q. What place?

A. In Nam Shan, New Nam Shan, Canton, China.

Q. What district is New Nam Shan located in?

A. Chung Shan.

Q. What is the date of your birth?

A. I was born in 1930, but Chinese, second month, thirteenth day.

The Interpreter: March 12th.

Mr. Kidder: 1930?

The Interpreter: Yes, 1930.

Q. (By Mr. Kidder): What are the names of your parents? A. Chan Deen.

Q. What is the name of your mother?

A. Fong Shee.

Q. Are your parents living?

A. Both deceased.

Q. Did you ever hear of Kin Mo Village?

A. Yes.

Q. Where is it located with reference to your own birthplace, New Nam Shan?

A. We are west of it.

The Court: How far?

The Witness: About walking distance, one hour.

The Court: Do you know how many lis?

The Witness: I do not know. [142]

Q. (By Mr. Kidder): How do you travel between your village and Kin Mo Village?

A. By walking.

(Testimony of Fay Jean Chew.)

Q. Which village is larger, Kin Mo or New Nam Shan? A. Kin Mo.

The Court: How large is Kin Mo Village?

The Witness: I guess it is about five to six hundred houses.

Q. (By Mr. Kidder): How large is New Nam Shan? A. About 200 houses.

Q. How long did you live in your birthplace, New Nam Shan?

A. 18 years. You know, the Chinese call it one year after you are born, so when I am 18—

Q. What year did you leave Nam Shan?

A. Chinese, 18 years old.

Q. You were 18 years old Chinese reckoning at the time you left New Nam Shan, is that right?

A. Yes.

Q. Do you know a person by the name of Yip Mie Jork? A. Yes.

Q. Are you related to him?

A. My grandma is the younger sister of Mie Jork's mother's father.

Q. Yip Mie Jork is a distant relative, would that be [143] right?

A. In China, we call relatives.

Q. Did you ever see Yip Mie Jork?

A. Yes.

Q. How old were you when you have your first recollection of having seen Yip Mie Jork?

A. From very young we know of each other's family.

(Testimony of Fay Jean Chew.)

The Court: But how old were you? Five, six, seven, eight, ten?

The Interpreter: She hasn't finished.

The Witness: But from my recollection, I think it was about eight years old, eight or nine years old.

The Court: How old was Yip Mie Jork then?

The Witness: He is bigger than I am.

The Court: Bigger?

The Witness: He is older, I think two or three years, about.

The Court: He was ten or eleven then?

Q. (By Mr. Kidder): Do you know the names of Yip Mie Jork's parents?

A. Yip Dock is the father, mother Wong She.

Q. Did you ever see Wong She?

A. Yes.

Q. Where did she live?

Q. Now she died already, but she used to live in Kin Mo. [144]

Q. Did you ever go to the Yip home in Kin Mo Village? A. Yes.

Q. In what section of the village was the home located, in what section of Kin Mo Village?

A. Near the east side.

Q. Were the houses in Kin Mo Village arranged in rows? A. Yes.

Q. Do you know in which row the Yip home was located from the east side of the village?

A. About the third row.

Q. During the time you lived in Nam Shan Vil-

(Testimony of Fay Jean Chew.)

lage from birth until approximately the age of 18, did you see Yip Mie Jork more than once?

A. Many times.

Q. About how often would you see him, say per year? A. About three times or so.

The Court: A year?

The Witness: Yes. Sometimes two times, sometimes three times a year.

Q. (By Mr. Kidder): What would be the occasions that you would see Yip Mie Jork?

A. Usually at vacation time, usually when they had a vacation.

Q. At the time you visited at the Yip home, did anyone ever accompany you? [145]

A. Sometimes with my own sister, sometimes with my grandmother.

Q. Did you ever stay overnight there at the Yip home? A. Yes.

Q. More than once? A. Many times.

Q. What was the longest period you stayed at the home?

A. One two weeks sometimes, sometimes three weeks.

Q. At the time you first knew Yip Mie Jork, how many people were living in the Yip home?

A. Three persons, as far as I recall, one mamma and two sons.

Q. What was the name of the mamma?

A. Wong She.

Q. What were the names of the sons?

A. Mie Jork and Share Wong.

(Testimony of Fay Jean Chew.)

Q. Did Yip Mie Jork ever visit at your home in New Nam Shan Village? A. Yes.

Q. More than once? A. Many times.

Q. About how often?

A. At least once or twice.

Q. Once or twice per what?

A. Per year. [146]

Q. Was he accompanied to your home by anyone on these occasions when he came?

A. Sometimes his mother Wong She and Share Wong, too.

Q. Did you ever discuss with Wong She the family relationship, matters of the family relationship? A. Yes.

Q. Was Wong She married? A. Yes.

Q. What was the name of her husband?

A. Yip Dock.

The Court: How does she know? You know, she can't testify to the marriage of these people. She wasn't present.

Mr. Kidder: I think she could testify, your Honor, still on the matter of pedigree.

The Court: She can't give her conclusions as to whether they were married or not. I am assuming they were married. All this witness knows is that she went back to the village home and she saw the plaintiff when the plaintiff was eight years old. That's all. She can testify that the plaintiff lived in the house, probably called a woman in the house mamma. That is all she can testify to.

Mr. Kidder: Let's assume that the family rela-

(Testimony of Fay Jean Chew.)

tionship has been discussed. She is a distant relative of this boy.

The Court: But just because you want to prove pedigree, you can't violate all the rules of hearsay, can you? [147]

Mr. Kidder: Pedigree is an exception to the hearsay rule, and where you have a declarant who may be dead or absent from the jurisdiction, any statement the declarant may have made to her as to the family relationship would be admissible.

The Court: You bring in the testimony of a witness who is not before this court. You don't give the Government any opportunity to cross examine the witness at all. I think the Government has some rights on cross examination.

Mr. Kidder: That may be true, but I think pedigree always goes to that circumstance, where you have family group who discuss family affairs.

The Court: She wasn't a member of the family. She was an outsider. She went over to visit two or three times a year.

Mr. Kidder: She did testify she was a relative.

The Court: What relative?

Mr. Kidder: A distant relative.

The Court: Can you tell me what relative she was?

Mr. Kidder: I can't follow that close, but in China they would be relatives because of the proximity.

Q. I now show you some photographs which are a part of Plaintiff's Exhibit 1 in evidence. I show

(Testimony of Fay Jean Chew.)

you the photograph in the upper left-hand corner and ask you if you can identify the persons therein beginning with the individual on the left? [148]

A. Share Wong?

Q. In the center? A. Share Leung.

Q. And the person on the left?

A. Mie Jork.

Q. I show you a photograph in the upper right-hand corner and ask you if you can identify the two people therein beginning with the person on the left? A. Mie Jork.

Q. And this person? A. Share Leung.

Q. I now show you a photograph on the lower right-hand corner of this group and ask you if you can identify this individual.

A. Yip Dock.

Q. Did you ever see this photograph before?

A. Yes.

Q. Where? A. A big one.

Q. Where?

A. At Mie Jork's home in the living room, hanging there.

Q. I now show you a photograph in the lower right-hand corner of this group and ask you if you can identify that individual? [149]

A. Share Wong.

Q. I now show you Plaintiff's Exhibit 5 in evidence, being a photograph, and I ask you if you can identify the three persons in that photograph, beginning with the person on the left?

A. The one on the right is Mie Jork. Share

(Testimony of Fay Jean Chew.)

Leung is in the middle. Share Wong is on the left.

Q. I now show you a photograph marked Plaintiff's Exhibit 6 for identification and ask you if you can identify that individual?

A. Wong She.

Q. Is this the same Wong She you have been discussing in the course of your testimony?

A. Yes.

Q. After you left the village in 1948, where did you go?

A. To get married.

Q. Where did you go?

A. Hong Kong.

Q. When did you come to the United States?

The Court: Before we get through that, you left the village when you were 18. How old was Yip Mie Jork at that time?

The Witness: I think either 20 or thereabouts.

Q. (By Mr. Kidder): When did you come to the United States? [150]

A. 1951.

Q. Did you ever return to your home village between 1948 and 1951.

A. Yes. I went back to the village.

Q. Did you go more than once to the village during that period?

A. Quite often. I don't remember how many times.

Q. Where was your home between 1948 and 1951?

A. You mean my own family after marriage?

Q. You were absent from the village or living

(Testimony of Fay Jean Chew.)

outside the village from 1948 to 1951. I want to know what village.

A. Either in Hong Kong or the village.

Q. When did you last see Yip Mie Jork?

A. 1949.

Q. Where?

A. At my own village, 1949.

Q. That is New Nam Shan Village?

A. Yes.

Q. Under what circumstances did you see him, there?

A. The occasion was when I went back after I was married. I used to go back to visit my parents when they were living. At that time when I went back to the village home, Mie Jork was visiting us, too, in the village home.

Q. Where was he living at that time, if you know? A. Kin Mo. [151]

Q. How did you travel from Hong Kong to New Nam Shan Village?

A. From Hong Kong we took the boat to Macao. From Macao to Dow Mon. From Dow Mon a little ways we walk home.

Q. How long did it take you to travel between Hong Kong and Macao by boat?

A. Four or five hours.

Q. How long did it take you to travel by boat from Macao to Dow Mon?

A. There is no set time, maybe eight or nine hours, because it depends upon the wind and the tide. They are small boats.

(Testimony of Fay Jean Chew.)

Q. Where did you get off the boat—strike that. How did you go from Dow Mon to your village? How did you travel? A. We walk.

Q. Does the boat dock at Dow Mon?

A. Yes.

Q. Is the city of Dow Mon right on the river or a tributary or water where the boat enters?

A. Not far away. There is a sort of place where the boat anchors.

Q. I now show you a map written in the Chinese language and ask you if you can locate on here first Hong Kong?

A. That is Hong Kong there. [152]

Q. Can you locate Macao? A. Here.

Q. Now, can you locate Dow Mon?

A. I can see the word Mon there. I can't find the word Dow.

Mr. Kidder: Mrs. Interpreter, did she point out the same location where the previous witness said the word Mon appeared only?

The Interpreter: Yes.

Q. (By Mr. Kidder): Can you find Kin Mo Village? A. Right below it.

Mr. Dooley: Your Honor, I object to this line of questioning for the simple reason the witness is merely reading the words from the map.

The Court: I understand that she is. I think it is for the court to evaluate the testimony. Objection overruled.

Q. (By Mr. Kidder): Is your village Nam Shan named on this map that you can locate?

(Testimony of Fay Jean Chew.)

A. I can't seem to see it. It is too small.

Mr. Kidder: Nothing further.

The Court: All right. You may step down.

(Witness excused.)

The Court: Call your next witness. [153]

CHIN SHEE

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Will you state your name?

The Witness: Chin Shee.

Direct Examination

Q. (By Mr. Kidder): Where do you reside, Mr. Chin? A. San Francisco, Sunnyvale.

Q. In what state?

A. Sunnyvale, California.

Q. What is your business or occupation?

A. Farmer.

Q. Where were you born? A. China.

Q. Where?

A. Nam Shan, Chung Shan Canton, China.

The Court: What was the village?

The Witness: Nam Shan.

Q. (By Mr. Kidder): Is there more than one Nam Shan Village?

A. There is a new one, but I lived in the old one.

Q. What is the date of your birth?

(Testimony of Chin Shee.)

A. Born in the year 1900, Chinese date eleventh month, [154] fifth day.

The Interpreter: That would be December 26, 1900.

Q. (By Mr. Kidder): What country are you a citizen of? A. I am a citizen of China.

Q. When did you first come to the United States?

A. 1919. I left about the sixth month from Hong Kong that year.

Q. Have you ever made any trips to the Orient since you entered the United States in 1919?

A. Yes.

Q. How many trips have you made?

A. Two times—three times.

Q. When did you first depart for China?

A. 1935.

Q. When did you leave for the United States?

A. 1936 returned.

Q. Where did you go during the course of that visit? A. Nam Shan.

Q. Old Nam Shan? A. Yes.

Q. When did you depart on your second trip?

A. 1947 I left, and returned 1947.

Q. How long were you in China at that time?

A. About half a year.

The Court: About six months? [155]

The Witness: Yes.

Q. (By Mr. Kidder): Where did you go at the time? A. Nam Shan.

(Testimony of Chin Shee.)

Q. When did you take your third trip, when did you depart on your third trip?

A. 1949.

Q. When did you return?

A. About a year or so, twelve or thirteen months.

Q. Where did you go on that occasion?

A. At that time to Macao because the Communists had already come to China and I didn't dare go back to the village.

Q. Did you know a person by the name of Yip Dock?
A. Yes.

Q. When did you first meet Yip Dock, when did you first see him?
A. 1900.

Q. Where did you meet him at that time?

A. Stockton, California.

Q. Where you living at that time?

A. I was living at Stockton, too.

Q. Did you see Yip Dock more than once in Stockton, California?
A. Many times.

Q. Over what period of time did you see him in Stockton?
A. Many years. [156]

Q. Approximately how many?

A. At least seven or eight or nine years.

Q. Under what circumstances would you see him in Stockton?

A. He is a friend of my brother.

Q. Where would you see him?

A. My brother has a store, Chinese herb store, and at that store I met him.

Q. What was the name of the store?

Mr. Dooley: I object, your Honor.

(Testimony of Chin Shee.)

The Court: Overruled.

The Witness: Bok Chai Tong.

Q. (By Mr. Kidder): Were you ever employed at the store? A. Yes.

Q. Did you see Yip Dock on any occasions when you were employed at the store?

A. Yes.

Q. When did you last see Yip Dock?

A. It is so long ago, many, many years ago. It could be 1924, 1925, about that time.

Q. At the time you departed for China on your first trip, November 1935, did you take or carry any articles with you to China?

A. Yes.

Q. What did you take or carry with you? [157]

A. Because Mr. Yip Dock was a friend of my brother, after he died there were things left by him left with my brother for me to bring home to China to his folks.

Q. What was the nature of these articles?

A. I couldn't recall all the content of the things in the suitcase, but there was a wristwatch, fountain pen, and some clothing.

Q. Whose property was this?

A. Yip Dock's property.

Q. How did it come into your possession?

A. Because Mr. Yip Dock is a friend of my brother and my brother was in charge of his funeral service, so what was left behind by Mr. Yip Dock, my brother entrusted to somebody who is reliable to bring home to China for him.

(Testimony of Chin Shee.)

Q. What did you do with these articles?

A. My brother delegated me to bring them back to his family in China, meaning Dock's family in China.

Q. What did you do with them?

A. I gave it to his wife, the suitcase.

Q. At the time you delivered these articles to her, where was the wife living?

A. Kin Mo.

Q. Where is Kin Mo located?

A. It is about an hour's walk from my place.

Q. Did you deliver these articles personally?

A. Yes.

Q. What happened on this occasion when you delivered the articles?

A. Well, when I enter the household, Mrs. Yip said, "I have these two children here," and that is all.

Q. How long were you at the house, the Yip house?

A. I was in the house about five hours, four or five hours.

Q. Were there any other people in the house when you were there?

A. Just the three of them.

The Court: May I ask a question? You say that she said, the woman in the house said, "I have these two children." How old were the children?

The Witness: I think, according to my observation, about seven or eight years old.

(Testimony of Chin Shee.)

Q. (By Mr. Kidder): Do you know the names of the children?

A. Yip Mie Jork was one, Yip Share Wong the other.

Q. Did you ever see Yip Mie Jork at any other time? A. Yes, again in 1947.

Q. Where did you see him at that time?

A. At that time I had some friend who was studying at Kin Mo and he used to travel back and forth between Nam Shan and Kin Mo, so whenever he goes, he would like to ask me to go [159] along and this is the place, and I said fine, because I also have a friend who died and left behind two sons in the village, so I used to go and see these two boys in the village.

Q. What was the name of your friend?

A. My friend, my clansman was Chin Gung Wing.

Q. Did you visit at the Yip home in 1947? Did you see Yip Mie Jork at that time?

A. Yes.

Q. Did you have any photographs taken with Yip Mie Jork in 1947? A. Yes.

Q. Where?

A. Yes, on the occasion when we go visit the ancestral tombs in a place nearby, you call it the graveyard here or the grave mound.

Mr. Kidder: Will you mark this, please.

The Court: Plaintiff's Exhibit 7 for identification.

(Testimony of Chin Shee.)

(The exhibit referred to was marked Plaintiff's Exhibit No. 7 for identification.)

The Witness: That is the place where the ancestors are buried.

Q. (By Mr. Kidder): I now show you a photograph and ask you if you have ever seen this picture before? A. Yes.

Q. Are you in this picture? [160]

A. This one, the one in the foreground.

Q. Will you place a mark beneath the person you designate as yourself?

A. (Witness complying.)

Q. Is Yip Mie Jork in this photograph?

A. Yes.

Q. Will you place a mark under the person to designate as Yip Mie Jork? A. Yes.

Q. When was this photograph taken?

A. 1947.

Q. And where? A. Dai Sham Hung.

Q. What's that?

A. This is the place called Dai Sham Hung. It is the burial ground for our ancestors.

Q. This background in the picture, does that represent the burial ground?

A. This is not exactly the spot. They always have to have a distance, you know. This is the entire ground. These are the big rocks.

Q. Who took this photograph, if you know?

A. It is a part of the Spring ritual.

Q. What person took the photograph?

A. Chin Gung Wing. [161]

(Testimony of Chin Shee.)

Q. Is that the person you identified as your clansman? A. Yes.

Mr. Kidder: I now offer this photograph in evidence.

Mr. Dooley: No objection.

The Court: It may be received in evidence.

The Clerk: Exhibit 7.

(The exhibit heretofore marked Plaintiff's Exhibit 7 was received in evidence.)

Q. (By Mr. Kidder): When did you last see Yip Mie Jork? A. 1949.

Q. Where? A. Macao.

Q. Approximately what date?

A. The eighth or ninth month of the year, about that time. I am not sure the exact date.

Q. Is that the American eighth or ninth month?

A. That is the American date, Western date.

Q. In what place in Macao did you see him at that time? A. He came to my home.

The Court: In Macao?

The Witness: Yes.

Q. (By Mr. Kidder): Where were you living in Macao?

A. Number 2 Fong on Sun Street, Macao.

Q. Did anyone come with Yip Mie Jork?

A. The big brother. [162]

Q. What is his name?

A. Share Leung Yip.

Q. Did anyone else come with Yip Mie Jork?

A. Share Wong was there.

Q. How many times did you see them in Macao?

(Testimony of Chin Shee.)

A. He visited me twice and I returned the call to his hotel and to come for tea.

Q. I now show you photos attached to Plaintiff's Exhibit 1, being a group of four photos, and ask you if you can identify the persons depicted in the upper right-hand corner of the photograph, beginning with the person on the left.

A. Share Wong.

Q. The middle? A. Share Leung.

Q. And on the right? A. Mie Jork.

Q. I show you a photograph on the upper-right-hand corner and ask you if you can name the persons depicted therein, beginning with the individual on the left. A. Mie Jork is on the left.

Q. This one?

A. The right is Share Leung.

Q. I show you a photograph in the lower left-hand corner of this group and ask you if you can identify this individual? A. Yip Dock. [163]

Q. Is this the person referred to as Yip Dock that you testified you knew in Stockton?

A. Yes.

Q. I now show you a photograph in the lower right-hand corner of this group and ask you if you can identify this individual?

A. Share Wong.

Q. I now show you Plaintiff's Exhibit No. 5 in evidence and ask you if you can identify the three persons in that photograph beginning with the person on the left?

(Testimony of Chin Shee.)

A. Share Wong left, Share Leung center, Mie Jork on the right.

Q. Did you ever travel from Hong Kong to your home village in China? A. Yes.

Q. How do you travel from Hong Kong to your home village? A. By boat.

Q. How long does it take you to travel from Hong Kong to Macao by boat?

A. Over four hours.

Q. How long does it take you to travel from Macao to your home village?

A. You know how the Chinese small river sometimes is drier and sometimes it is high tide, so approximately eight to [164] seven hours or more, depending on the tide.

Q. Where did you get off the boat just before you reach your home village?

A. Dow Mon.

Q. How far is it from Dow Mon to your village?

A. A little over an hour, perhaps, walking.

Q. Is there any means of transportation other than walking between Dow Mon and your village?

A. Formerly it is usually by walking, but in recent years I know that they have bicycle transportation.

Q. I show you a map with Chinese characters and ask you if you can locate on here the city of Macao.

The Court: Mr. Kidder, there is no dispute as to the location of Hong Kong, Macao and Canton. We have already got testimony in as to the location

of the village. The map shows where the village is. I am satisfied that these witnesses are only reading from the map. They are reading the name.

Mr. Kidder: I will dispense with that then. It may not be necessary. I just want to show the familiarity of the witness with the territory.

I have no further questions of this witness.

The Court: I am going to have to continue this matter. I was hoping we could dispose of it this afternoon, but I have a judges' meeting that I have to attend. I am going to be down in San Diego next Monday. What have we got for next [165] Monday?

(Discussion between court and clerk.)

The Court: We will continue this matter to 2:00 o'clock next Tuesday, a week from tomorrow, 2:00 o'clock.

Mr. Kidder: Before we close I would like to offer Plaintiff's Exhibit 6 for identification in evidence, which has been identified as Wong She by two people.

Mr. Dooley: No objection.

The Court: It may be received in evidence.

The Clerk: Exhibit 6.

(The exhibit heretofore marked Plaintiff's Exhibit 6 was received in evidence.)

(Whereupon, an adjournment was taken until Tuesday, July 26, 1955, 2:00 p.m.) [166]

July 26, 1955; 2:00 o'clock, p.m.

The Clerk: No. 14967-HW Civil, Yip Mie Jork versus John Foster Dulles, further trial.

Mr. Kidder: Ready for the plaintiff.

Mr. Dooley: Ready for the defendant.

Mr. Kidder: I would like to call to the stand Mr. Chew Jock.

The Court: I will make the usual order excluding all other witnesses.

CHEW JOCK

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Will you state your name?

The Witness: Chew Jock or Jock Chew.

Direct Examination

Q. (By Mr. Kidder): Where do you live, Mr. Chew? A. Now?

Q. Yes. A. Oakland, California.

Q. Do you have any business or occupation?

A. 4735 Congress Avenue, Oakland, California. I work on a farm and my son has a grocery store. I am living with him. [168]

Q. Where were you born? A. China.

Q. What place?

A. How Chow, Chung Shan Canton, China.

Q. What is the date of your birth?

A. January 12, 1896.

Q. Is that the American date or the Chinese date? A. Yes.

(Testimony of Chew Jock.)

Q. Which? A. American date.

Q. Of what country are you a citizen?

A. I am a citizen of this country.

Q. When did you first come to the United States? A. 1915.

Q. Have you ever made any trips to China?

A. Yes.

Q. How many? A. Two times.

Q. When was the first trip? A. 1926.

Q. When did you then return to the United States?

A. 1928, about five or six months. About fifth or sixth month, I returned.

Q. Where did you stay in China on that trip?

A. How Chow. [169]

Q. Is How Chow a village? A. Yes.

Q. When did you make your second trip to China? A. 1947.

Q. When did you return to the United States?

A. 1949.

Q. Where did you stay in China on that visit?

A. You mean 1947 to 1949?

Q. Yes.

A. Hin Bin Chin or Hin Bin Village.

Q. Where is Hin Bin Chin Village?

A. Not far from How Chow in the Chung Shan area.

Q. Did you ever hear of Kin Mo Village?

A. Yes.

Q. Where is Kin Mo Village?

A. South of Hin Bin Village or Chin.

(Testimony of Chew Jock.)

Q. About how far south?

A. I can't tell you how many lis, but you can walk about an hour's time to get there.

Q. Where is your birthplace, How Chow Village located with reference to Kin Mo Village?

A. From How Chow, the distance between How Chow and Kin Mo would be about an hour and forty-five minutes or two hours' time, walking time.

Q. Did you know a person by the name of Yip Dock? [170]

A. Yes.

Q. When did you first meet Yip Dock?

A. 1918.

Q. Where? A. Stockton, California.

Q. What were the circumstances of the meeting?

A. In Stockton, California I used to go to a Chinese grocery store by the name of Wah Kwen (phonetic) and there he also frequented that place and there we met.

Q. Did you see Yip Dock more than—strike that. You testified that you returned to China in 1926. Did you see Yip Dock more than once between your first meeting about 1918 and the time you returned to China in 1926?

A. From 1918 to 1919, when I was farming, I saw him many times that year, that period.

Q. What do you mean by many times?

A. I can't exactly tell how many times, but I would say about a half-dozen times or so, and every time when I came from the village to have my hair cut, I also met him.

(Testimony of Chew Jock.)

Q. Where would these meetings occur, in what city?

A. In Wah Kwen at Stockton, California, the grocery store.

Q. You testified you returned to China in 1926. Did you see Yip Dock in China at any time after 1926? A. Yes. [171]

Q. When did you first see him in China?

A. The first time I see Yip Dock?

Q. Yes, in China. A. In China?

Q. Yes.

A. About the eleventh month American date, November that year.

The Court: What year?

The Witness: 1926, the year I went to China.

Q. (By Mr. Kidder): Where did you see him at that time? A. At my home in my village.

Q. What village was that?

A. Hin Bin Village.

The Court: Was anybody with him at that time when you saw him in your home?

The Witness: The wife, his wife.

The Court: What was the wife's name?

The Witness: Wong She.

The Court: Was anybody else with him?

The Witness: No.

Q. (By Mr. Kidder): Did you see him in China more than once during this trip of yours between 1926 and 1928? A. More than once.

Q. When did you next see him after this meeting of about November 1926? [172]

(Testimony of Chew Jock.)

A. In December when I got married, I also invited him to come to my dinner or banquet.

Q. December of what year? A. 1926.

Q. Where were you married?

A. How Chow.

Q. Did Yip Dock attend your wedding banquet?

A. Yes.

Q. When did you next see Yip Dock?

A. The next time when I go over to his place for dinner or baby banquet.

The Court: Baby banquet?

The Witness: Yes. At the time when one month old they have a celebration something like our baptism party.

Q. (By Mr. Kidder): When you state "to his place," to what do you refer?

A. Kin Mo Village.

Q. Where did Yip Dock live, if you know, in what village did Yip Dock live? A. Kin Mo.

The Court: You say you went back in 1926. You saw him in November and you saw him again in December. When did you go over to his house for this baby banquet?

The Witness: 1928.

The Court: In 1928. What time in 1928? [173]

The Witness: About the second month Chinese calendar.

The Court: What is the second month Chinese calendar?

The Witness: Either March or April.

(Testimony of Chew Jock.)

The Court: When did you come back to the United States in 1928?

The Witness: About May or June.

The Court: Then this baby banquet occurred one or two months before you came back to the United States?

The Witness: I can't exactly remember. I think approximately a couple of months.

The Court: All right.

Q. (By Mr. Kidder): Do you know the name of the child for whom this banquet was held?

A. Mie Jork.

Q. When did you next see Yip Dock?

A. At the time when I came back to the United States.

The Court: You saw him here in the United States?

The Witness: Yes, at Stockton, California.

The Court: What year was that?

The Witness: About 1929.

Q. (By Mr. Kidder): Where in Stockton did you see him at that time?

A. He was ill at the hospital.

Q. What hospital?

A. I don't know the name. [174]

Q. Did you ever see Yip Dock after that time?

A. No.

Q. Going back a moment to this baby banquet, you stated you attended, where was this banquet held?

A. In the home of Yip Dock.

(Testimony of Chew Jock.)

Q. Did you ever later see the person named Yip Mie Jork? A. 1947.

Q. Where? A. At Hin Bin Chin Village.

Q. Where in Hin Bin Chin Village?

A. At my home.

Q. How long did you see Yip Mie Jork at that time? A. Three or four hours or so.

Q. Did you ever see Yip Mie Jork at a later date? A. Yes.

Q. When?

A. The next time is when my son got engaged and we had a party and he came for the festivities.

The Court: When who got engaged?

The Witness: My son.

The Court: What year was that?

The Witness: 1947.

Q. (By Mr. Kidder): Where was this engagement feast?

A. In my home in Hin Bin Village. [175]

Q. How long did you see Yip Mie Jork at that time?

A. It was longer, but I can't tell you how many hours, but longer than the last time.

Q. Would it more than a day?

A. More than half a day. Not quite a day.

Q. Did you ever see Yip Mie Jork at a later date?

A. The next year when my son got married, he also came again for the wedding feast.

The Court: That is 1930?

The Witness: Yes.

(Testimony of Chew Jock.)

Q. (By Mr. Kidder): What year?

The Witness: 1947 was the engagement. 1948 was the marriage, the wedding.

Q. (By Mr. Kidder): Where was the marriage held? A. In Hong Kong.

Q. Where did you see Yip Mie Jork?

A. The couple, my son and bride, got married in Hong Kong, but when they returned home, I gave them a celebration, the party, at my own home.

Q. Where was the marriage feast held then?

A. In my home in the village.

Q. Which village? A. Hin Bin Village.

Q. Did you ever see Yip Mie Jork at a later date?

A. 1949, before my return to the United States, I saw [176] him again in the village, my own village.

Q. Where in your village? A. My home.

Q. I now show you certain photographs contained in Plaintiff's Exhibit 1 in evidence and ask you if you can identify the persons depicted in the photograph in the upper left-hand corner of this group of four photographs, beginning with the individual on the left.

A. Yip Share Wong, Share Leung, Yip Mie Jork.

Q. I now show you a photograph in the upper right-hand corner of this group and ask you if you can identify the people in that photograph?

A. This is Yip Share Leung on the right; this looks like Mie Jork to me. It is so small.

(Testimony of Chew Jock.)

Q. I now show you a photograph in the lower left-hand corner of this group and ask you if you can identify this person? A. Yip Dock.

Q. Is this the person you have referred to as Yip Dock in your testimony? A. Yes.

Q. I now show you a photograph——

The Court: Yip Dock was the father?

Mr. Kidder: Yes.

The Court: The father he saw in China? [177]

Mr. Kidder: Yes.

The Court: All right.

Q. (By Mr. Kidder): I now show you a photograph in the lower right-hand corner of this group and ask you if you can identify this individual?

A. It looks like Share Wong to me.

Q. Have you ever seen any of these photographs before in this group?

A. This is my first time.

Q. I now show you Plaintiff's Exhibit 5 in evidence and ask you if you can identify the three persons in that photograph beginning with the individual on the left.

A. Left side is Share Wong, Share Leung, Mie Jork on the right.

Q. Who is Yip Share Wong?

A. Younger brother of Mie Jork.

Q. Have you ever seen Share Wong?

A. Yes.

Q. Where?

A. You didn't ask me a while ago, but when we

(Testimony of Chew Jock.)

had these two parties, the engagement and the wedding banquet, he was also there.

Q. Have you ever traveled from Macao to your home village?

Let me amend that to Hin Bin Chin Village.

A. Yes.

Q. How do you travel, by what means?

A. Some kind of a boat with a sail.

Q. How long does it take to travel from Macao to your home village, approximately?

A. If the tide is good and high, it is eight or nine hours, but if the tide is low, ten to eleven hours. There is no certainty as to exactly how many hours, depending on the tide.

Mr. Kidder: I have no further questions of the witness.

The Court: I want to ask the witness a question or two. You have identified this photograph in Exhibit 1 as Yip Mie Jork?

The Witness: Yes.

The Court: How old was Yip Mie Jork when you saw him the first time?

The Witness: When he was a month old.

The Court: How old was he when you saw him the next time?

The Witness: 19 or 20. It was 1947 and he was about around 19 or so.

The Court: Then you saw him when he was two months old first and the next time he was 19 or 20?

The Witness: That is right.

The Court: I haven't any other questions.

Mr. Kidder: I have no further questions. I might say [179] his testimony was not offered for identification in 1947. It was offered only to cover the birth, his knowledge of the birth.

The Court: Of course, I guess we can assume that this boy was born. I don't know what his name was, but he was born, at least. This might be the plaintiff or it might not be, but somebody was born.

Mr. Kidder: The only purpose of this testimony was that. I have no further questions of this witness.

The Court: All right. Is this your last witness?

Mr. Kidder: Yes, he is my last witness.

The Court: Have you any other testimony?

Mr. Kidder: I have no further testimony.

The Court: You may step down.

(Witness withdrawn.)

Mr. Kidder: I would like to offer at this time for the possible use of the court these maps I have used, one in Chinese, which bears some identification, and an enlarged section of this same map for possible use. I would like to have the interpreter identify these Chinese maps, if I may.

Mr. Dooley: Your Honor, I object on the ground that there is no proper foundation, irrelevant, hearsay, and incompetent, and on the additional ground that prior to showing the maps to the witnesses they were marked by the interpreter.

The Court: I think the objection as to foundation, [180] lack of foundation, is good. I don't know who made these maps or how they were made. I will sustain the objection to the maps.

Mr. Kidder, before the defendant proceeds with cross examination, this last witness testified he saw the plaintiff when he was two months old and didn't see him again until he was 19, and yet he identified him right off. How in the world can a witness tell that from a two months baby to 19 years old?

Mr. Kidder: Not at all. His testimony was not offered for that purpose. He testified he saw the boy in 1947 named Yip Mie Jork. That is the only connection between the birth and 1947. He didn't say it was the plaintiff. He said it was a person named Yip Mie Jork. He identified that person as the person in the photograph, your Honor.

The Court: I reopened the case for the purpose of allowing you to produce additional testimony. The first witness didn't see the plaintiff until he was six years old.

Mr. Kidder: That would be the young lady.

The Court: Then the second witness saw the plaintiff when he was seven or eight years old. The third witness didn't see the plaintiff until ten or eleven years old.

We are going to have to assume that there was a marriage, I think there was a marriage, and also that there were children born of this marriage. There is nothing here to establish the fact that the alleged plaintiff is the child that was born to [181] these parents.

This last witness is typical of this case, that is, he saw a baby two months old, next saw him 17 years of age.

When this case was originally tried, the parties

who testified hadn't seen the plaintiff until they saw him in Macao when the boys were 19 or 20 years of age. I think you have to have something more than just general reputation. That is what you have tried to establish here.

Mr. Kidder: With respect to the first witness, assuming that she didn't actually didn't see him until he was six or seven years of age, she was born on the same street as he was, she saw him when she was a little schoolgirl and they played on the streets together. This boy is in the Yip house.

The Court: Let's assume that. Can we assume because a boy lives in a certain house that he is the son of the alleged father?

Mr. Kidder: We have testimony from the last witness, for example, that he in 1928 attended a birth feast in the home of Yip Dock for a boy known as Yip Mie Jork, which I think establishes there was a boy born at that time by that name.

Then we come along next with the testimony of this girl who lived in the same row of houses, who played with a boy by the name of Yip Mie Jork who came from the same household on the street. She attended school with this boy. Although [182] they were in different classes, she attended the same school. She saw him until 1948 in the village. His name is Yip Mie Jork and he lives in this house.

Then you have the testimony of a relative, I say it is distant, but in going back over it, she says her grandmother was a sister of the grandfather, and she first knew this person at the age of eight or nine years. She knew him as Yip Mie Jork. He

comes from the same household. She identified the mother by photograph, and she identified the father by photograph. It is the same one. They testified there was the same photograph in the family home.

You have Chin Shee, the witness who, granted, doesn't know the boy, but he did take articles back there, personal belongings from the United States to the mother in 1935. They are the personal belongings of Yip Dock who has been identified as the father, the one who died. He has his photograph taken with this boy in 1947 at this burial ground. He also saw him again in 1949.

You have Russell Chan, the second witness, who saw Yip Mie Jork when Chan was about eight or nine years old. His mother and this witness visited at the home, in the Yip home. They saw him several times. They saw him up until 1938, saw him again up to 1947 and 1950.

The relative testified she stayed as long as one month in this particular home. I think, if I remember rightly, she [183] said several times she stayed as long as a month in the Yip home, and here is this boy who we say is the plaintiff Yip Mie Jork in the home with the mother, who we say is the mother Wong She.

I think if that testimony is considered as a whole that it does show a pattern where there was a boy born in 1928 who has been identified as the plaintiff, the son of Yip Dock.

The Court: Well, this last witness, I don't think the testimony of this last witness is valid when he

identifies this photograph. I don't know how in the world he can do that.

Mr. Kidder: He saw him several times in 1947 and he saw him several times in 1949.

The Court: He testified he never saw the boy from the time he was two months old until he was 19 or 20.

Mr. Kidder: Yes. I knew that when I put him on. I believe if I saw someone, and your Honor, too, sometime in 1947 and saw him again in 1949, you would be able to identify a photograph, a recent photograph. Those photographs are recent ones, 1947, and the other 1949. There may be one later than that. No, they are all 1949. I believe we could identify the person we had seen for several times in that recent time. I agree there would be no way for him to know that this was the same baby he saw when the baby was one month or two months old, but he didn't testify to that. He testified he saw a person by the name of Yip Mie Jork, and that is our [184] whole testimony, that he identified Yip Mie Jork who has been identified by other people as the son of Yip Dock.

The Court: Mr. Dooley, what have you got to say?

Mr. Dooley: I say not only is the testimony insufficient to establish the plaintiff's case, but I don't think the testimony is to be believed. I have certain impeaching documents here with respect to one or two of the witnesses that I would like to develop on cross examination. I think the testimony is incredible.

The Court: Supposing we proceed with the cross examination, but I want to finish this case this afternoon.

Mr. Dooley: Yes, your Honor. I will see if I can't develop it rather rapidly. I will take the last one, Chew Jock.

CHEW JOCK

Cross Examination

Q. (By Mr. Dooley): Mr. Chew, you testified, I believe, that in 1926 you saw Yip Dock in China, is that correct? A. Yes.

Q. And you met his wife at that time?

A. At the time when I was married, yes.

Q. Did you meet Yip Dock's wife?

A. Yes.

Q. Were you introduced to Yip Dock's wife?

A. Yes, Yip Dock introduced her. [185]

Q. Where did that take place?

A. They came to my home.

Q. And Yip Dock introduced you to his wife?

A. Yes.

Q. Were you then introduced to any of Yip Dock's children? A. No.

Q. Do you know of a child of Yip Dock by the name of Chin Shee?

Do you know the name of a child of Yip Dock by the name of Yip Jeang Shing? My spelling is J-e-a-n-g S-h-i-n-g? A. No.

Q. How many children of Yip Dock did you know? A. Three.

Q. What were the names of these three?

(Testimony of Chew Jock.)

A. Yip Share Leung, Yip Mie Jork, and Yip Share Wong.

Q. Did you ever discuss that with Yip Dock his children?

A. All he said is, "I have some children in China, Hong Kong—not Hong Kong, but the village."

Q. How many did he say he had?

A. Three or four.

Q. There was no child in China in his home in 1926 besides Yip Mie Jork?

Mr. Kidder: I will object to that on the ground that the [186] evidence doesn't show that Yip Mie Jork was there in 1926.

Mr. Dooley: I withdraw that.

Q. Was there any child in China in Yip Dock's home in 1926?

A. There were a lot of children running around there. I don't know how many there were there.

Q. In his home?

A. In the entrance of the house and around the home there.

Q. About how many children were running about the home in 1926?

A. You mean Yip Dock's home?

Q. Yip Dock's home.

A. In 1926? In 1926, he came over to my home for the party, for the feast.

Q. Did you go to his home in 1926?

A. No.

Q. Did you go to his home in 1928?

A. Yes.

(Testimony of Chew Jock.)

Q. Was that the time that the children were running around Yip Dock's home, in 1928?

A. That's right.

Q. How many children were there running around Yip Dock's home in 1928?

A. I can't tell you how many. [187]

Q. How old were the children running around Yip Dock's home in 1928?

A. I don't want to make the definite statement of their ages, but some may be eight or nine, some may be two or three years old.

Q. How many were there, were there about six or seven running around the home?

A. A few of them come in and a few of them go out and I don't know how many. They were just children playing around.

Q. You don't know whether they were Yip Dock's children or not, is that it?

A. The one that was having the full moon party was Yip Dock's baby.

Q. Were there any of the others his children in his home that were running around?

A. There were children running around. I cannot tell who they belonged to, but there was a baby born to him when I went to the party.

Q. But he didn't tell you whether the other children running around were his or not?

A. Nobody mentioned whether they were or not to me.

Q. In your trip during 1926 to 1928, did you

(Testimony of Chew Jock.)

visit any other persons in China that you can recall, excluding Yip Dock? A. No. [188]

Q. Are you sure of that? A. No.

The Court: The only person you visited then was Yip Dock?

The Witness: Yes.

Q. (By Mr. Dooley): Were you introduced to any other person in China besides the wife of Yip Dock? A. No.

Mr. Dooley: If the court please, may I mark this Defendant's Exhibit A for identification?

The Court: It may be marked for identification.

The Clerk: Exhibit A.

(The document referred to was marked Defendant's Exhibit A for identification.)

The Court: May I ask this witness a question? How many wives did Yip Dock have?

The Witness: All I know is Wong She.

The Court: Did Yip Dock ever tell you he had another wife?

The Witness: He has not mentioned that to me.

Q. (By Mr. Dooley): Mr. Chew, I show you Defendant's Exhibit A for identification and call your attention to the writing in Chinese near the bottom of this exhibit and ask you whether this is your signature? A. Yes. [189]

Q. Defendant's Exhibit A, I am going to read from this exhibit and ask you whether this question was asked you on or about the date of this document, June 13, 1928, and whether this is the answer that you gave. I will withdraw that, your Honor.

(Testimony of Chew Jock.)

When you returned to the United States in 1928, did you come through the Immigration Authorities?

A. Yes.

Q. And did you make any statement to the Immigration Authorities?

A. I don't remember. Maybe I have. I am sure there must be some questions.

Q. I am going to read your statement from Defendant's Exhibit A for identification and ask whether this question was asked by the immigration authorities whether this was your answer.

"Q. Did you visit any resident of this country who happened to be at his home during your recent stay in China, or did you visit the home of such resident? "A. No."

Was that question asked you and was that the answer you gave?

A. You mean in 1928 they asked me where I have been when I was in China?

Mr. Dooley: Repeat the question to the witness.

The Court: Read the question to the witness.

The Witness: You mean if I have ever been a witness to anybody?

Mr. Dooley: Will you translate the question for the witness?

The Witness: I can't recall what was asked me at that time.

The Court: The question hasn't been asked yet.

The Witness: No. I didn't answer that way.

Q. (By Mr. Dooley): I am going to read another question from Defendant's Exhibit A and ask

(Testimony of Chew Jock.)

you whether this question was asked you and whether this was the answer you gave.

“Q. Were you introduced to the son, daughter or wife of any resident of this country?

“A. Wong Sue Ngit, wife of Jeung Yuk Sung, living in Ling Gung Village.”

Was that question asked you and was that your answer? A. Yes.

Q. And why is it, Mr. Chew, you did not mention the wife of Yip Dock?

A. They never asked me that question.

Q. Did they not ask you, were you introduced to the son, daughter or wife of any resident of this country, Mr. Chew?

A. I cannot recall nor remember what they asked me at that time. [191]

Q. But you did, Mr. Chew, give the name of Wong Sue Ngit, wife of Jeung Sung?

A. They didn't ask me, so I didn't tell.

Q. But you stated a moment ago, did you, Mr. Chew, that you were not introduced to anyone else except the wife of Yip Dock, did you not?

A. This is a different person. This is a different village. This party is not of the same village.

Mr. Dooley: Your Honor, the defendant offers in evidence Defendant's Exhibit A for identification as Defendant's Exhibit A.

Mr. Kidder: I object to it on the ground it is immaterial and irrelevant and doesn't go to any impeachment of this witness here.

The Court: If there is an objection on the ground

(Testimony of Chew Jock.)

it is irrelevant and immaterial, I will have to overrule the objection. I think it is material. I think they can show contradictory statements at some previous time.

Mr. Kidder: This is on a collateral matter. Here is a man who for two years——

The Court: But the thing the court has to determine in all these cases is whether or not he believes the witness. The credibility of a witness is very important in these cases. Anything that throws any light upon the credibility of the witness, I think is important. Objection overruled. [192]

The Court: Exhibit A.

(The exhibit heretofore marked Defendant's Exhibit A was received in evidence.)

Q. (By Mr. Dooley): Now, Mr. Chew, you were a very good friend of Yip Mie Jork, is that correct? A. Yes.

A. He attended your son's wedding and your son's engagement, is that correct? A. Yes.

Q. When did you first meet Yip Share Leung?

A. 1918 in Stockton.

Q. How old was Yip Share Leung in 1918?

A. Over ten years old.

Q. You have known Yip Share Leung through the years, is that correct? A. Yes.

Q. When was the last time you saw Yip Share Leung?

Mr. Kidder: I object on the ground it is ambiguous. Before when?

(Testimony of Chew Jock.)

Q. (By Mr. Dooley): Before the present trial, before today.

A. About 1943 in San Francisco.

Q. Do you know Yip Sue Mong? A. No.

Q. Do you know any of the children of Yip Share Leung? [193]

A. You mean the children of——

Q. Of Yip Share Leung?

A. Sue Mong, See Mon or Mong, or Sue Mon.

Q. When did you meet Yip See Mon?

A. 1943.

Mr. Dooley: No further questions.

The defendant would like to cross examine Chin Shee.

The Court: Maybe the plaintiff would like to examine this witness further.

Mr. Kidder: May I see the last exhibit?

Redirect Examination

Q. (By Mr. Kidder): You testified, Mr. Chew, that you last saw Yip Share Leung in 1943. That is before the present date, is that right?

A. 1943.

Q. Were you here at the trial last week when it began?

A. I didn't understand what you meant by the last time. Yes, I was here last week with him.

Q. Was Yip Share Leung here at the same time?

A. Yes.

Q. When did you meet this person you testified last about, See Mon, when did you first meet him?

(Testimony of Chew Jock.)

A. 1943.

Q. Where? A. San Francisco. [194]

Q. I show you Defendant's Exhibit A and ask you if the answers appearing in English were written by you on this particular form?

A. Not mine. I just have to write my name there.

Q. Do you recollect whether the information given on this form was read to you before it was signed by you?

A. Well, I was being inquired and I was asked to sign my name here. I don't know what is in the paper.

Q. Who is this person Jeung Yuk Sung mentioned in Exhibit A? A. A friend of mine.

Q. Where is Ling Gung Village?

A. I don't know where the village is located. I just know this man in America.

Q. Is this Ling Gung Village in the Chung San District?

A. I really don't know where that village is. I don't know the location.

Mr. Kidder: Nothing further.

The Court: All right. Which witness do you want to call now?

Mr. Dooley: I would like to ask one or two more questions.

Recross Examination

Q. (By Mr. Dooley): Mr. Chew, who approached you with regard to testifying [195] in this case?

A. In San Francisco when I saw She Mang and he asked me to help to testify in this case.

(Testimony of Chew Jock.)

Q. Was that Yip She Mang? A. Yes.

Q. When did you first meet Yip She Mang?

A. You mean what period of time the first time?

Q. The first time. A. 1943.

Q. And Yip She Mang lives in San Francisco, is that correct? A. Yes.

Q. Did you know that She Mang is related to Yip Mie Jork?

A. Yes. They are uncle and nephew, or something like that.

Q. How long had Yip She Mang lived in San Francisco?

A. That I wouldn't know, because I was in San Diego before and in 1943, when I went to San Francisco, I met him.

Q. And you lived in San Francisco at the same time as Yip She Mang from 1943 to the present?

A. No. I go to San Francisco for a few days at times and then I return to San Diego.

Q. During your trips to San Francisco, would you see Yip She Mang? [196]

A. Yes.

Q. How often would you see Yip She Mang?

A. Many times. I can't tell you exactly how many times. Sometimes when he returns home from school, I would buy him cold drinks, and sometimes we go for tea. Sometimes I take him out for a meal.

Q. Did you see Yip She Mang during 1953?

A. When I refer to 1943 I misheard. It is supposed to be 1953 when I met him.

Q. You did see him in 1953? A. Yes.

(Testimony of Chew Jock.)

Q. Several times? A. Yes.

Q. Did you discuss the family affairs of Yip Dock with him?

A. We talked about work and jobs, and so on, not about family affairs.

Q. Did you ask him about Yip Mie Jork?

Mr. Kidder: May I ask, are you referring to 1953?

Mr. Dooley: 1953, yes.

The Witness: I don't think so.

Q. (By Mr. Dooley): Did you see Yip She Mang in 1954 in San Francisco? A. No.

Mr. Dooley: No further questions. [197]

Mr. Kidder: Nothing further.

The Court: Call your next witness.

The Witness: Remember, it is not 1943, but 1953 I was referring to.

(Witness excused.)

CHIN SHEE

a witness called for and on behalf of the plaintiff, having been previously duly sworn, was recalled and testified further as follows:

Cross Examination

Q. (By Mr. Dooley): Mr. Chin, last week you testified that you went to China in 1935, is that correct? A. Yes.

Q. And you returned in 1936? A. Yes.

Q. And you testified you took certain articles to China during that trip, is that correct?

(Testimony of Chin Shee.)

A. Yes.

Q. And you took those articles to Yip Dock's wife, is that correct? A. Yes.

Q. And you went to the home of Yip Dock's wife, is that correct? A. Yes. [198]

Q. And while there, you were introduced to Yip Dock's children, is that correct?

A. Mrs. Yip Dock did introduce.

Q. Mr. Chin, when you came back to the United States in 1956, did you go through the immigration authorities? A. Yes.

Q. Did you make any statements to the immigration authorities at the time you returned to the United States? A. Yes.

Mr. Dooley: Will the clerk please mark this Defendant's Exhibit B for identification, which purports to be a statement from an official immigration file relating to Chin Shee.

Mr. Kidder: I move to strike that on the ground the document itself is the best evidence of what it is.

The Court: It is only introductory.

Mr. Dooley: It purports to be, I said.

The Court: Denied. You may proceed.

(The document referred to was marked Defendant's Exhibit B for identification.)

Q. (By Mr. Dooley): Mr. Chin, I show you Defendant's Exhibit B for identification and refer you to the Chinese characters near the bottom of the page and ask you whether that is your signature.

A. Yes.

Q. I am going to read to you from Defendant's

(Testimony of Chin Shee.)

Exhibit [199] B for identification and ask whether that question was asked you or whether this was the answer you gave on about December 18, 1936?

“Q. Did you take any money, letters, or anything else from the United States to anyone in China on this trip, and if so, to whom? “A. No.”

A. The package I brought was not a gift brought back for anybody. It was something that was inherited, left from the deceased to be conveyed back to the family. It was not a gift.

Q. Was that question asked you and was that the answer you gave?

A. When they asked me the question, everybody was in a rush getting ready to get ashore at that time when the questions were asked.

Q. Was that question asked you and was that the answer you gave? A. I don't remember.

Q. You stated that the material that you carried back was an inheritance so you didn't consider that a gift? A. I classified that that way.

Q. Next I am going to read another question from this Defendant's Exhibit B and ask you whether this question was asked you and whether this was the answer you gave: [200]

“Q. Were you introduced to the son, daughter or wife of any resident of this country?

“A. No.”

Was that question asked you and was that the answer you gave?

A. I don't remember such a question or the answer to it.

(Testimony of Chin Shee.)

Mr. Kidder: I move that the last question be stricken if the Government is using that for impeachment purposes, because there is no testimony in the record that he was introduced to the wife of any resident, and also that the wife of any resident would probably refer to a living person. At that time Yip Dock was dead.

The Court: He testified he went to see the wife. The wife said, "I have these two children."

Mr. Kidder: The question is, "Were you introduced to the son of any resident of this country." If you take that literally, you would have to be introduced, and certainly it would have to be a resident of this country, and at that time Yip Dock was dead.

I don't know how they ask these questions.

The Court: He says he doesn't remember.

Mr. Kidder: I object on the ground if he is using this for impeachment purposes, that I would make a motion that it be stricken because it is not impeachment. [201]

The Court: I think he has the right to ask the question. The man says he doesn't remember.

Mr. Dooley: The defendant offers Defendant's Exhibit B for identification into evidence as Defendant's Exhibit B.

The Court: Now, I will sustain an objection. You are objecting to the introduction?

Mr. Kidder: On the ground it is not proper impeachment and no foundation has been laid for it.

The Court: Sustained. When a man says he

(Testimony of Chin Shee.)

doesn't remember, how are you going to impeach him? If he said, yes, that was the question and that was the answer, it could go in because he admits it.

Mr. Dooley: I believe you can introduce it when either he denies it or says he doesn't remember.

The Court: I will sustain the objection.

Mr. Dooley: Otherwise, if I had an impeaching statement, the opposing side could always keep it out by saying, "I don't remember."

The Court: That is right. You cannot use that as an impeaching statement unless you can produce the people who heard him say it and put it down. I don't know who wrote it down.

Mr. Dooley: It bears a signature.

The Court: It is written in English and this man evidently doesn't understand English or can't write it. Not [202] only that, it is written on the typewriter. If the witness will admit that that question was asked and that was the answer, it can go in, but when he says, "I don't remember," I don't know how you are going to get it in.

Objection sustained.

Q. (By Mr. Kidder): Mr. Chin, you obtained certain articles, you testified, from your brother. Was that where you got the articles you took to China? A. Yes. In a suitcase.

Q. When did you get these articles from your brother? A. About the end of 1935.

Q. When did Yip Dock die?

A. I think it was around 1929 or thereabouts.

(Testimony of Chin Shee.)

Q. So it was about six years after Yip Dock's death that you took these articles to China?

The Court: My understanding is the question was, "When did you get the articles?"

Mr. Dooley: Right.

The Court: Let's don't confuse the question. It was six years after the death before he got the articles, is that right?

Mr. Dooley: He went back then.

The Court: The question was, "When did you get the articles?" He said about six years.

Is that right? [203]

You didn't get this suitcase until about six years after Yip Dock's death?

The Witness: My older brother was taking care of his affairs, this Yip Dock's affairs, and his belongings. Maybe if there were somebody whom they could trust and who was leaving for China before my time, maybe the other man might have taken them.

The Court: Then you got these articles from your older brother, is that right?

The Witness: My older brother took advantage of the fact that I was leaving for China at the time when I left and gave me that to be delivered back to the family.

The Court: How long before you left for China did you get these articles?

The Witness: Before my departure, three or two weeks before my departure.

(Testimony of Chin Shee.)

Q. (By Mr. Dooley): Do you know where those articles were between 1930 and 1935?

A. My brother?

Q. Your brother kept them, is that correct, the articles, during that period?

A. It was in my brother's custody.

Q. At the time that you took those articles to China, did you know whether Yip Dock had any children in the United States? [204]

A. Yes.

Q. And at the time your brother was keeping the articles, do you know whether Yip Dock had any children in the United States?

A. You mean if my brother knew of it or not?

Q. Did you know? A. Yes.

Q. Now, Mr. Chin, do you know Yip Share Leung? A. Yes.

Q. When did you meet Yip Share Leung?

A. In Stockton.

Q. When was that?

A. I can't tell you the exact year. Near the vicinity of 1919 or 1920.

Q. Did you see Yip Share Leung during the year 1952? A. Yes.

Q. Did you see Yip Share Leung during the year 1953? A. Yes.

Q. Did you see Yip Share Leung during the year 1954? A. You mean last year?

Q. That is correct. A. Yes.

Q. While you were in China, Yip Mie Jork visited you several times, is that correct?

(Testimony of Chin Shee.)

Mr. Kidder: I object on the ground there is no testimony [205] he visited him.

The Court: Read the question.

(Question read.)

The Court: Overruled. This is cross examination.

The Witness: Yes.

Q. (By Mr. Dooley): And you were a very good friend of Yip Mie Jork, is that correct?

A. Yes.

Q. During 1953 and 1954 did you ever ask Yip Share Leung about Yip Mie Jork?

A. You mean ask of whom?

Mr. Dooley: Read the question.

(Question read.)

The Witness: That was the time when I was in America. You mean if I asked of him through Share Leung in America when I was in America?

Q. That is correct.

A. I guess I must have asked about how the family are faring, and so on.

Q. Then you knew that Yip Mie Jork had an action pending to be declared a citizen of the United States?

Mr. Kidder: Your Honor, I will object on the ground it is immaterial.

The Court: Sustained. Mr. Dooley, I don't know how much longer you want to go on with this witness. It seems to [206] me you are just wasting your time. We have 15 minutes. If you want to

(Testimony of Chin Shee.)

cross examine the other witnesses, I suggest you go ahead and do it.

Mr. Dooley: I guess I had better get another witness.

The Court: Do you have any other questions, Mr. Kidder?

Mr. Kidder: No questions.

The Court: All right.

(Witness excused.)

Mr. Dooley: I will call the number one witness.

LEONG LAN GIN

a witness called for and on behalf of the plaintiff, having been previously duly sworn, was recalled and testified further as follows:

Cross Examination

Q. (By Mr. Dooley): Mrs. Leong, you were a pretty close friend of Yip Mie Jork, is that correct?

A. Yes.

Q. You grew up together, is that correct?

A. That's right.

Q. And you used to visit each other's home, is that true? A. Yes. [207]

Q. Now, when the trial took place during May of 1955, you didn't want to testify on behalf of Yip Mie Jork, is that true?

Mr. Kidder: I will object on the ground it is immaterial whether she wanted to testify or not. It has no bearing on any of the issues.

The Court: Overruled.

(Testimony of Leong Lan Gin.)

The Witness: The first time I was not here.

Q. (By Mr. Dooley): Isn't it true that Yip Share Leung asked you to testify on behalf of Yip Mie Jork and you refused to do so?

A. I think Yip Share Leung approached my husband to come to testify.

Q. And he did not approach you?

A. Because I have children at home. If I was not necessary, naturally I would rather stay home and take care of my children and let my husband come. I am willing to come because my husband couldn't come.

Mr. Dooley: No further questions, your Honor.

Redirect Examination

Q. (By Mr. Kidder): Mrs. Leong, now that you have come to testify at the trial, was your testimony all truthful?

Mr. Dooley: I object, your Honor.

The Witness: Yes. [208]

Mr. Dooley: On the ground the witness has taken the oath to tell the truth.

The Court: It is presumably true. Overruled.

The Witness: Yes.

Mr. Kidder: I have no further questions. I would like to point out in our affidavit to reopen, we did not suggest that this witness was not available on the first occasion. No further questions.

The Court: Mr. Dooley, do you want to cross examine the other witnesses?

Mr. Dooley: No, your Honor. I will reserve the

remaining time for anything the court might want to hear in the way of argument.

(Witness excused.)

The Court: As far as this last witness is concerned, what I picked out from her original testimony is she testified that she didn't meet the plaintiff until she was about six years of age that she could remember. I doubt very much that a youngster six years of age can remember that well. Maybe people can remember a great deal better than I can, but six years of age seems pretty young to remember. She testified that the plaintiff at that time was about five years of age. No, she testified the plaintiff was five years older than she was, which would make the plaintiff eleven. If this witness was six and the plaintiff was five years older, it would be [209] eleven. It seems improbable to me that an eleven-year-old boy would play with a six-year-old girl.

Mr. Kidder: Your Honor, may I say something, not on this witness, but if your Honor would give us a little more time, the half-brother is here.

The Court: I don't mind. You can bring the others all in.

Mr. Kidder: I make the request only for the half-brother. I wanted him to be here when you were ruling.

The Court: All right.

When this case was originally tried in May, I was not at all satisfied with the testimony of the various witnesses. The thing we are interested in all these cases is whether or not the alleged son is

really the son of the alleged father. In this particular case at the original hearing, the trial we had, there was no one who could testify as to the paternity, because the only witnesses who were able to testify testified that they heard the boy was born. They didn't see the boy then. These other witnesses said they didn't see the plaintiff until he was 18 or 19 years of age when they saw these two boys in Macao.

I asked the half-brother how he knew that the party he alleged, that he identified as Yip Mie Jork was Yip Mie Jork, and he said he just felt it, he talked and discussed the family relationship, so he just knew he was his half-brother. [210]

I think it takes more than that to justify a finding of paternity.

I rendered a judgment in favor of the defendant in this case.

Subsequent thereto, there was a motion made to reopen for the purpose of producing additional witnesses to throw some light upon the situation, and I was hoping that we could have a witness who could testify as to the birth of the boy and also testify that he had seen the boy grow up in the home, and so on. But we have witnesses who can only testify partially. One of the main things in these cases is the credibility of the various witnesses.

The only thing the Government has to do in these cases is to try to break down the credibility of the witnesses, to see whether or not the witness is telling the truth. When we try to determine whether

or not all the pieces will fall in together and will add up to the total sum or bring the conclusion we want, we have to rely upon the testimony of witnesses.

What we are trying to do is to determine whether or not the witnesses are telling the truth, and if they are, whether or not the stories will jibe.

The first witness that was brought in was Leong Lan Gin. She testified she was born in Kin Mo Village CR 19-7-19, which was translated as September 11, 1930. She testified [211] she lived in that village until she was 18 years of age. Said that she first remembered the plaintiff when she was six years old. The plaintiff was five years older than she was, which would make the plaintiff eleven.

It seems to me that it is very strange that a eleven-year-old boy will play with a six-year-old girl. However, although it is strange over here, it may not be strange in China.

There is one thing I am particularly interested in. The witness said she was born September 11, 1930. The plaintiff was born February 22, 1928. There is a two and a half-year difference between the plaintiff and the witness. The witness testifies there is five years difference. You just cannot make a mistake of fifty per cent, a mistake of two and a half years. If they were 18 or 20 or 22, it wouldn't make any difference, but when a youngster is five years, it makes a lot of difference. So there is the first discrepancy in the witnesses' testimony.

Now, as far as Russell Chan is concerned, he cannot testify the plaintiff was the son of the al-

leged father. He never saw the plaintiff until—I don't know whether he testified he never saw him until he was four years of age or seven or eight years of age, but, however, he can't testify the son was actually born to this alleged father and mother.

Now, Fay Jean Chew didn't see the plaintiff until he was [212] eleven or twelve years of age. How can this witness testify that the boy was actually born to the alleged mother?

Chin Shee didn't see the plaintiff until he was eleven years of age. Chin Shee said he went back to China. He took the belongings of the father back to the alleged mother and he said the alleged mother, "I have these two children." He didn't say that she said, "These two children belong to the alleged father." Just, "I have these two children."

So, I just don't think the court is justified in finding for the plaintiff on this sort of testimony. The Circuit Court has just written an opinion, I didn't bring it in with me, I didn't know I was going to refer to it, in which the Supreme Court pointed out that these are precious rights, they shouldn't be taken away from the alleged children without substantial proof. On the other hand, these are sacred rights and they shouldn't be given to anyone without some substantial evidence. I don't think the evidence is substantial, that there is enough in this case.

Mr. Kidder, I reopened the case for you because I wanted you to present any evidence you had. The Circuit leans over backward in these cases in favor of the plaintiff. The Circuit may decide there is

enough evidence in this case to justify a finding in favor of the plaintiff, but I just don't find it.

Mr. Kidder: We have, of course, presented the best [213] witnesses we have. It is unfortunate that there are not other members of the family who are available who can testify in his behalf.

The Court: You know, I have said from the bench before that I consider the best testimony we can have is the testimony of the mother and father, particularly the mother. In this case we have neither the mother nor father. They are both dead.

Mr. Kidder: That is right.

The Court: But now, what have we got? The testimony of a half-brother. I asked the half-brother how he knew. He just felt it. You can't grant citizenship upon a feeling in the mind of a half-brother.

Mr. Kidder: I think he mentioned the family relationship. If a person had not seen the brother for many years, it is reasonable to think that he would talk with the brother about the family and that between the two they should arrive at a conclusion who their parents were, whether it is a half-brother or not.

The Court: I know, but we can talk about family relationship, particularly if we have someone in the family who is very inquisitive, without establishing the fact there is a father and mother relationship.

Well, I wanted to give you the opportunity to present all the evidence you have. I am very sympathetic with these [214] claims and I want you

to present all the evidence you have. Maybe if you will take this to the Circuit, the Circuit will decide there is sufficient evidence in this case to justify the court in determining that the claim of the plaintiff is valid. I am not holding that the claim of the plaintiff is not valid. I am just holding that the plaintiff has not sustained the burden of proof in establishing that in the mind of the court.

Mr. Kidder: We have presented all the evidence we have available to us. The only other one would be the plaintiff, who is not available to us, and that is because the defendant will not let him come.

The Court: Just because there is a child in the home, I don't think that is an indication that the woman in the home is the mother of the child, or the father who goes to the home is the father of the child. In China, the Chinese people have a strong feeling of family responsibility. Of course, there is no evidence here that this alleged mother took a stranger into the family or relative into the family, but, however, it is possible such a thing happened.

So when we don't have any body to tell that he was there when the child was born, "I remember this child from now until he is six years of age," when the next witness can pick him up, there is a gap that I don't think you have been able to cover at all. All you have got is from the date of [215] the birth of the child, and then there is a gap until he is six years of age when he was found in the home of Yip.

Mr. Kidder: We do have, your Honor, files of

Yip Dock, the father, to the effect that he had a son born on a particular day.

The Court: That is right, but we don't have anything to show that this was the boy.

Mr. Kidder: We then show that beginning about six he is in the home.

The Court: Mr. Kidder, I don't agree with you. However, I agree you have a right to make your record. I have allowed you to make your record. You have got all the evidence you can get.

Judgment will be for the defendant. The defendant will prepare the findings of fact and conclusions of law. [216]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 3rd day of October 1955. [217]

.....

Official Reporter

[Endorsed]: No. 14925. United States Court of Appeals for the Ninth Circuit. Yip Mie Jork, Appellant, vs. John Foster Dulles, as Secretary of State, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: October 28, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14925

YIP MIE JORK, Appellant,
vs.

JOHN FOSTER DULLES, as Secretary of State,
Appellee.

APPELLANT'S STATEMENT OF POINTS

Yip Mie Jork, as appellant herein, presents herewith the following statement of points upon which he intends to rely on appeal.

The District Court erred in finding as a fact that:

1. The evidence adduced to establish that he is the lawful blood son of Yip Dock was scant; that the witnesses who testified on his behalf had little real knowledge of the claimed relationship and their

testimony was, in many respects, improbable and unworthy of belief.

2. Appellant failed to sustain the burden of proving he is a national or citizen of the United States and failed to present sufficient credible evidence to sustain the burden of proving that he is the lawful blood son of Yip Dock.

The District Court erred in concluding as a matter of law that:

1. The appellant failed to sustain the burden of establishing his claim to United States nationality.

2. The appellee is entitled to judgment and costs.

Dated: October 10, 1955.

/s/ MARSHALL E. KIDDER,
Attorney for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed Oct. 28, 1955. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD

Appellant hereby designates, pursuant to Rule 17 (6) of the Rules of Practice of this Court, a portion of the record which is material to the consideration of the appeal, and which should be printed:

1. Petition for Declaratory Judgment under Section 503 of the Nationality Act of 1940.

2. Answer.

3. Stipulation and Order for Substitution of Party Defendant.

4. Findings of Fact and Conclusions of Law, dated June 2, 1955.

5. Judgment entered June 2, 1955.

6. Order Setting Aside Judgment, Findings and Conclusions and Reopening Case.

7. Findings of Fact and Conclusions of Law, dated August 10, 1955.

8. Judgment entered August 11, 1955.

9. Transcript of the trial in the United States District Court.

10. Notice of Appeal.

11. Stipulation regarding consideration of exhibits in original form.

12. Appellant's Designation of Record.

Counsel for the parties have stipulated, subject to the approval of the Court, that appellant's Exhibits 1, 2, 3, 4, 5, 6 and 7 and appellee's Exhibit A may be considered in their original form and need not be printed.

Dated: November 25, 1955.

Respectfully submitted,

/s/ MARSHALL E. KIDDER,
Attorney for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed November 29, 1955. Paul P. O'Brien, Clerk.